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D I A L O G U E

B E T W E E N A

JUSTICE OF THE PEACE

A N D A

F A R M E R.

By THOMAS DAY, Esq.

*K with free*

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THE THIRD EDITION.

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## D I A L O G U E.

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*Justice.* **I** AM exceedingly sorry for your situation; but the act is so clear, that you are incontestably subject to the penalty.

*Farmer.* So, then, I am subject to a penalty of twenty pounds, merely because I rode Old Ball, the blind mare, along with a sack of bran, from the mill?

*Jus.* Indubitably. You ought to have entered her within twenty days. The clause is clear, "All persons," &c.

*Far.* So, then, I am to be severely punished, because I did not understand all the quirks of the law as well as our attorney or his clerk? and yet this is a land of liberty!

*Jus.* Liberty! I hope you have not the least doubt of it. Hear what the learned Blackstone has said upon the occasion, "The idea and practice of this political or civil liberty, flourish in their highest vigour in these kingdoms, where it falls little short of perfection, and can only be lost or destroyed by the folly or demerits of its owners: the legislature, and of course the laws of England, being peculiarly adapted to the preservation of this inestimable blessing, even in the meanest subject\*." Again, in the same page, "This spirit of liberty is so deeply implanted in our Constitution, and rooted even in our very soil, that a slave or a negroe, the moment he lands in England, falls under the protection of the laws, and so far becomes a free man; though (adds that excellent author) the master's right to his service may possibly still continue†."

*Far.* I cannot say I perfectly understand that last passage, how the negroe is a free man, and yet the master may possibly have a right to his service; but, I suppose, then, the law is more favourable to negroes than us farmers.

*Jus.* Not at all. The English Constitution is the perfection of human reason. It leaves the subject entire master of his own conduct, except

\* Blackstone's Commentaries, vol. I, page 127.<sup>28</sup>

† Ibid, page 126.

in those points wherein the public good requires some direction or restraint.

*Far.* The public good!

*Jus.* That is, the common interest of the whole nation.

*Far.* I am much obliged to you, Sir, for your information. So, then, the interest of the nation requires, that no farmer should ride a blind horse to mill, without paying ten shillings to the government?

*Jus.* Otherwise the tax would never have been imposed.

*Far.* And the same public interest requires, that a man should be forbidden to write his name upon a bit of unstamped paper; or should he ignorantly take a receipt without a stamp, that he should pay his money twice over?

*Jus.* I can shew you the act.

*Far.* Then the public interest requires, that every man in the nation should be a knave?

*Jus.* Far from it. It is the business of all human laws to encourage morality, and discountenance fraud and injustice; and this is the more particularly true, of that admirable constitution under which you have the happiness to be born.

*Far.* Pray, Sir, is it honest to pay our just debts?

*Jus.* Undoubtedly.

*Far.* But to deny that we have received what

is

is our due, although we are conscious that we have really been paid the whole, what is that?

*Jus.* The extreme of human turpitude, odious to common sense, stigmatised by common feeling, and punished, I believe, by every government under the sun.

*Far.* Yet I have read of a country where every man was rewarded by a sum of money, that would be guilty of this crime.

*Jus.* Such a country must be the refuse of human society. There could be neither trade nor agriculture carried on; because, either the subjects would be more honest than their governors, and then they would equally detest them and their pretended laws; or else the spirit of villany would increase so widely, under the patronage of the government, as to root out all confidence among men.

*Far.* Pray, Sir, is it not a reward, if the government encourages a man to demand a debt which he knows he has been paid; and instead of punishing him for his villany, ordains that he shall be paid a second time?

*Jus.* Certainly.

*Far.* Yet the stamp act does all this, unless I am much mistaken, when it encourages a man to deny his own hand-writing, directs a judge to take his part upon the bench, and a jury to find a verdict in his favour.

*Jus.* Ah!



*Jus.* Ah! farmer, farmer, I see you are more knave than fool.

*Far.* And your worship, I dare say, is the contrary.

*Jus.* A wit too! Come, my honest friend, I see you have been reading some of these vile, inflammatory publications, which, to the disgrace of all government, are allowed to be circulated in this country. But sit down with me for an hour or two; and I will endeavour to make you sensible of the excellence of the government under which you live; a government whose only fault, as a late ingenious author observes, is that of allowing its subjects too much liberty\*.

*Far.* Probably this gentleman would have all our legs and arms tied.

*Jus.* Not so; for then you would not be able to labour for the advantage and amusement of those who govern. He would probably think it sufficient if every man was to wear a gag.

*Far.* Mercy upon us, gag an Englishman! it is a pity that his own mouth had not been gagged, before he talked such nonsense.

*Jus.* Well, farmer, but what are the objections you have to make against the present happy state of things?

\* We have, indeed, too much oratory, too much liberty! Thoughts on a Parliamentary Reform, p. 25.

*Far.* Hap-

*Far.* Happy, do you call it, when a man's property is taken from him every day, by a parcel of laws so vague and uncertain, that, I believe, the very framers never understood them, or intended them to be understood by others!

*Jus.* This is all rant and declamation which you have learned by frequenting the company of real and pretended patriots, that is, "those who have more honesty than sense, and those who have more sense than honesty\*."

*Far.* I always understood, Sir, that a patriot had been a man who was sincerely attached to his country's welfare, and desirous of promoting it.

*Jus.* Right. Such a man has more honesty than sense.

*Far.* Pray, Sir, is not the public happiness and that of individuals the same? In other words, where the laws and government are best calculated to promote the public good, are not individuals most happy?

*Jus.* Undoubtedly.

*Far.* Why, then, is a man a fool for wishing to promote the public good, when his own is included in it?

*Jus.* These are abstract speculations, which we will leave for the present. Let us hear your objections to our present excellent Ministry and Government.

\* Thoughts on a Parliamentary Reform, p. 3.

*Far.* I can-

*Far.* I cannot conceive that any government, which is continually plundering the property of its subjects, and punishing them for the most innocent and indifferent actions, can be a good one.

*Jus.* And can you prove that to be done here?

*Far.* I can feel it to be done. Does the Parliament ever meet for any other purpose, than to impose new burdens, and those of the most intolerable nature, equally pernicious to trade and agriculture?

*Jus.* The necessities of the times are, indeed, a little pressing; but can you deny the admirable talents of our present Ministers for financiering?

*Far.* That is a word I do not exactly understand; will your worship please to explain it?

*Jus.* A financier is a person, that when a nation is so loaded with debts and taxes, that you would think it impossible for it to bear any new ones, shall yet contrive to load it with fifty or an hundred millions more, and find out taxes to pay the interest.

*Far.* And does the ingenious person invent any method of making the earth more productive than it was before, or of enabling those who cultivate it, to live without food?

*Jus.* That is none of his business.

*Far.* This financiering, then, reminds me of an accident that lately happened, which I will relate to your worship: a neighbour of mine,

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had

had one of the strongest and best horses in the country, which he used frequently to send to mill with a large load of corn upon his back; but at last, not contented with the poor animal's carrying a greater weight than any other beast in the country, he would be laying wagers with one and another, that his horse could carry so much additional weight.

*Jus.* And what happened?

*Far.* That at last he loaded him so unmercifully, that the poor creature dropt down dead under the burden, and by that means put an end to all farther experiments.

*Jus.* Farmer, I see that you are very malicious. But can you deny the exquisite judgement with which the taxes of the present year were planned?

*Far.* I am no great judge of these matters; but with your worship's permission, I will repeat a little of what I have heard said about the country.

*Jus.* Aye, aye, do; it will be easy to answer all their superficial objections.

*Far.* First, then, I have heard Squire Homespun observe, that nothing can be so absurd and oppressive, as to be eternally multiplying not only the amount of taxes, but the method of collecting them.

*Jus.* Homespun! Aye, that fellow has not common sense; he is a speculator.

*Far.* Is



*Far.* Is it not enough, said he, that I pay an annuity of six pounds seventeen shillings for the privilege of riding in a carriage? And now I am to hunt out another locust of the excise or stamps, in order to pay a duty upon each of the horses? They have already taxed the coachman, the wheels, and the horses; I suppose next session will bring with it a tax upon the harness.

*Jus.* And is this all?

*Far.* No, your worship. All the little farmers throughout the country, that found it a very hard matter to live before, say, that it is an intolerable grievance, to be obliged to pay for the horse they ride to the blacksmith's or to mill; besides, say they, the act is so very loosely worded, that a man may be prosecuted only because his carter rides the fore-horse of the team back from plough.

*Jus.* To be sure the act will bear that construction; but you may trust the lenity of the bench for that.

*Far.* Thank your worship. But they say, they thought they lived in a free country, where men that were innocent were safe. If they are every moment of their lives to be subject to criminal prosecutions for nothing, they had better go, at once, to America.

*Jus.* Poor souls, how little they know of freedom, to think of going to a place where there are neither kings, nor lords, nor bishops!

*Far.* Then there is your tea act. —

*Jus.* Aye, farmer, that is, indeed, a master-piece; what can you say to that?

*Far.* There is a little French dancing-master that puts up at the inn where I go every week to market; — now the farmers and he used always to enter into political disputes; — but last time I saw him, he was in high spirits, and we none of us had a single word to say.

*Jus.* Why so?

*Far.* Begar, said he, I did alway tell you Englishman, that you not only take our façons to eat, to dance, to talk, but at de last, you also steal our government.

*Jus.* Heaven forbid!

*Far.* Here, said he, you laugh at us because we are obliged to buy a certain quantity of salt, whether we chuse it or not; and now your own ministry has laid a gabelle upon the tea.

*Jus.* A gabelle! What, does he call the commutation act a gabelle?

*Far.* Yes, indeed — nor can I see any difference. While the duties were attached to that outlandish drug, a man might choose whether he would buy it or not. But if he must pay the duty, though he does not consume the commodity, what is this, but adopting all the oppressive part of the French tax?

*Jus.* There is something in what you say. But then consider the cheapness of the article; every labourer

labourer throughout the kingdom will now be able to drink it at a moderate price.

*Far.* A great advantage that, to diminish the price of tea for the use of the poor ! I wonder the same public-spirited gentleman has not undertaken to reduce the price of arsenic for the use of the poor.

*Jus.* What has arsenic to do with tea ?

*Far.* As much as one poison has to do with another. I believe there is not a man acquainted with the state of the poor, that has not cursed the hour when first the custom of drinking tea began. It has destroyed all industry in their families, and tends more effectually to ruin their healths and weaken their constitutions, than a dozen years of famine together. Beer, which is almost a necessary to an Englishman, is prohibited by the oppressive taxes with which it is loaded ; while the poor are to be encouraged to drink tea, till, like their betters, they dwindle into a race of monkies.

*Jus.* But then consider, farmer, what a mortal wound to smuggling !

*Far.* A mortal wound to smuggling, when every year produces new impositions, new penalties, new restraints ! Rather say, that we shall grow a nation of smugglers ; for that is more likely to happen.

*Jus.* But surely you will allow the game-act to be a most political invention ?

*Far.* Indeed I will not, for any one except the poachers.



poachers. Indeed, to say the truth, you gentlemen have never understood your own interest upon that subject.

*Jus.* Why not, farmer? Speak out; you may be perfectly free with me.

*Far.* Do you, then, imagine, that any farmer will interest himself in the preservation of game, which he is forbidden to touch, merely that he may have his corn trodden down, and his fences destroyed by every idle gentleman, or his game-keeper, throughout the country? No; he knows a more convenient method. Partridges to him are as great a nuisance as jays or magpies, and their nests are much more easily destroyed.

*Jus.* But this act does not affect the farmer. It only affects the qualified man.

*Far.* And are there not hundreds of qualified farmers throughout the kingdom? Will these people make a yearly journey to London on purpose to pay their two guineas and enter their names, for the chance of shooting a brace of partridges in the season? All these were once the enemies, but will now become the allies of the poachers: and with all your laws you will find the breed of game diminish every day. Then, to be sure fifty guineas make a moderate penalty for a man's missing a partridge upon his own estate.

*Jus.* You do not consider that these are not penal, but merely revenue laws.

*Far.* I do not see, Sir, what difference it makes



to the sufferer, under what pretence, or in what name he is ruined. And the revenue laws are only the more dreadful and oppressive of the two; for they prohibit innocent actions with greater penalties than are due to the most criminal.

*Jus.* But surely you do not find any thing oppressive in the very moderate duty which is laid upon bricks and tiles?

*Far.* All that I know is, that the minister was very ill advised who laid it. I have heard many gentlemen who have visited foreign countries assert, that the peculiar superiority of England consisted in the opulence of the farmers, and the greater value and convenience of their buildings; which at once enabled them to keep larger stocks of cattle, and to enrich their lands with more manure.

*Jus.* That is true; no country in Europe can vie with England in that particular.

*Far.* Where, then, is the policy of presenting an obstacle to the farther improvement of the country, by loading all additions and repairs with a most heavy and disproportionate tax? If the minister had only considered the necessary buildings of a moderate farm; the quantity of barns, of stables, of out-houses of every denomination; the number of bricks which must be unprofitably consumed even in drains, in gate-ways, in water-dams; together with the amazing price of labour in this country, he would surely have relinquished a project

ject which promises to send us back to the mud-walls and thatched cottages of our ancestors.

*Jus.* There was a worthy gentleman who wished to ease the farmer, and make the tax general, by admeasurement of all buildings.

*Far.* A very worthy design truly ! Had such an act taken place, ne'er a farmer throughout the kingdom would have been able to alter a pig-stie, or tile a necessary, without a solemn application to the government, or a permit from the excise. Is that the same gentleman that is employing his genius to lay a tax upon beggar's curs ?

*Jus.* Yes, I believe it is ; and I hope the next session will present you with a bill for that excellent purpose.

*Far.* I must tell you what I heard old Mr. Homespun say upon that occasion ; I happened to be with him when the subject was mentioned ; he immediately took three strides about the room : Then, by G—, said he, the English have been called a most turbulent and rebellious people ; but let them shew me in the history of the whole world, a more patient, tractable, spiritless set of asses than they are become. In the last age, indeed, they made a fuss, because one of their kings wanted to pick their pockets of about forty shillings ; but now they are cheated every year of millions, by a set of fellows that do not even pretend to common honesty, and chained like galley-slaves into the bargain. — Is there a single circumstance

stance of life, however indifferent, that is not monopolized by the government, and then retailed upon the most exorbitant terms to the subject? We cannot breathe, we cannot ride, we cannot eat, we cannot shelter ourselves from the weather; and will any one pretend to say how long we may be allowed to ease nature without the intervention of an exciseman?

*Jus.* Nasty, illiberal brute!

*Far.* Indeed, added he, filth of every kind is so congenial to the nature of a statesman, that I wonder it has escaped so long. O, wretched country, what a jargon of nonsense and contradiction are thy laws become; firebrands in the hands of a set of men, who have been the destruction of every other country, to oppress thy innocent and useful sons!

*Jus.* This Mr. Homespun is a most turbulent and seditious man!

*Far.* There are some things, added he, so very base and humiliating, that I should think even governments would spare their subjects, with a view to their character with the rest of the world. But a country that has already submitted to see a tax levied upon the last deplorable state of human nature, death, and the sacred order of the clergy become pimps to the cruelty of the government, in collecting it, will scarcely blush at any thing.

*Jus.* A libellous wretch!

*Far.* And yet I cannot help laughing, he proceeded,



ceeded, to think how a Frenchman, or a Turk, or any inhabitant of a free country, must stare to see John Bull running to the Stamp Office, in order to get the start of a prosecution upon the delivery of a pregnant bitch? Or to see an excise-man breaking open the house of an obnoxious Squire, at midnight, by virtue of his office, to search for smuggled puppies in the coal-hole! Or to see a justice of the peace, that retailer of oppression to every administration, granting a search-warrant against a blind beggar, to examine, by legal inquest, whether the cur that leads him has a stamp ticket at his tail.

*Jus.* What, did Homespun say all this?

*Far.* Yes, Sir, and a great deal more.—What refined humanity, said he, must that politician have, that would introduce a bill to hang up, in one day, so many hundred thousand of the most affectionate and faithful animals in the world!

*Jus.* But this is all a mistake, farmer; there will be no hanging, only a moderate tax, so much per head.

*Far.* But will it not produce the same effect; will every wretched labourer be able to compound with the excise for the privilege of maintaining a cur?

*Jus.* And what business have these fellows to keep dogs at all?

*Far.* And what business have their betters? Are they not men, as Mr. Homespun said, men

that



that are compelled to suffer all the hardships that are incident to human nature? They rise several hours before the rich even think of putting on their cloaths; they suffer the inclemency of all the seasons; they satisfy their hunger upon the coarsest food; and all to enable a few lazy, luxurious persons to riot upon their labours, and insult their useful poverty. But to deprive them of the few comforts which their situation admits, to force from them the honest, grateful animal that shares their hardships, amuses their children, and guards their cottage; this, this, is a degree of diabolical tyranny that could never enter into the head of any one but——

*Jus.* Hold, farmer, or I shall be obliged to commit you for *scandalum magnatum*.

*Far.* I beg your worship's pardon; but you know I am only repeating what another said. I do not pretend to understand these matters myself; but as your worship was so good as to offer to instruct me, I thought I might just repeat what I have heard from abler heads than my own.

*Jus.* That's true; but this Mr. Homespun is such a pestilent fellow, that he is not to be borne. But however, farmer, in compliance with my promise, I must inform you, that all these taxes are not willingly imposed by our present wise and virtuous Ministry.

*Far.* If they are not willingly imposed, why are they imposed at all?

*Jus.* Because preceding Ministers, that were neither wise nor virtuous, have contracted the debt, and their successors are obliged to pay it.

*Far.* Supposing they were not to pay it, what would be the consequence?

*Jus.* There would be an end of national credit:

*Far.* I have heard much of national credit: will you please to explain it to me?

*Jus.* Why, when a Minister has got a majority of the House on his side, he knows that they will make no scruple of trusting him with forty or fifty, or an hundred millions, for any purpose that he pleases.

*Far.* What, of their own money?

*Jus.* Of their own money! Probably they have not so many pence in the world.

*Far.* Who does it belong to then?

*Jus.* The public. But, as it would be difficult to raise so much at once, the Minister sends to all his friends in the city, rich merchants, stock-jobbers, contractors, members of parliament, and they lend him what he wants, upon condition that the public shall pay about an hundred and ten or an hundred and twelve pounds, for every hundred which he receives.

*Far.* Why, then, these people get ten or twelve per cent. of the public for lending their money. Have they much trouble in doing it?

*Jus.* Not

*Jus.* Not so much as I have in talking to you. They just write their names, with the figures of five hundred thousand, or a million, against them; and by these means, many of them clear thirty, forty, or fifty thousand pounds in a year, and that without owning as many shillings.

*Far.* And what is done with this money when the Minister has it?

*Jus.* As it is generally war time, it is paid away to contractors of all sorts, for the army, the navy, the ordnance; to send a fleet, perhaps, three hundred leagues off, in order to pick up cockle shells, or make the fortune of an admiral; to send a couple of thousand of brave fellows to catch the rot, and die like sheep in foreign ditches, or, perhaps, to maintain ten thousand more abroad for several years, doing nothing but playing at all-fours, or acting farces.

*Far.* And is this the reason why I am to have my waggons and my horses, and even the hat upon my head, taxed?

*Jus.* Certainly. The last Minister has run the nation in debt about an hundred and forty millions, at a moderate computation.

*Far.* But upon what pretence could he incur so ruinous an expence?

*Jus.* Merely because the nation was so poor that it could not pay its former debts.

*Far.* What! and did a majority of the parliament give him an hundred and forty millions more

more to spend, because the nation was so overloaded before? This appears to me a very simple proceeding, and against their own interest.

*Jus.* Farmer, farmer, your reflections are but simple. A considerable part of these gentlemen have either nothing of their own, or what they have, is in the hands of their creditors. They are composed of "a very few considerable merchants, men of large monied property, mixed with those who, from their birth and education, and landed possessions, have every title to be ranked in the patrician order; a few ambitious rising lawyers, a great many sons and younger brothers of peers; country gentlemen of decent fortunes, with some men of parts of little or no fortune, introduced by the influence of individuals \*."

*Far.* I must confess I can have no great opinion of such an assembly. Yet for what reason do they give away the public money so wantonly?

*Jus.* Are you ignorant that "men get into parliament in pursuit of power, honours, and preferments †?" And that "their corruption will always increase in proportion to their power, because they have more to sell, and more necessary to be bought ‡?"

*Far.* So, then, I am to understand that these

\* Dialogue on the actual State of Parliament, p. 23.

† Thoughts on a Parliamentary Reform, p. 23.

‡ Ibid, p. 17.



gentlemen are bribed by the Minister, in order to give away the public money?

*Jus.* They are, indeed, influenced, "but very seldom to injure their country, because it is seldom the interest of Ministers to injure it\*."

*Far.* What, is it no injury to the country to have the public money squandered away unnecessarily, and to reduce all the industrious people in the kingdom to a state of worse than Egyptian bondage? Was the American war no injury?

*Jus.* That, indeed, you are welcome to abuse, because it was the act of the last Ministry; and therefore, my good friend, you may give a loose to all your indignation against it; call it a wicked war, an abominable war, an unnatural war, an impious war.

*Far.* Aye, aye, so I do; and I wish all that were concerned in it were hanged upon a gibbet as high as that of Haman.

*Jus.* No, no, there you go too far. It is necessary to hang smugglers, or those who rob an hen-roost, but never great men that have large parliamentary connections. It is sufficient if they retire from office with a moderate pension of ten or eleven thousand a year.

*Far.* But if no Minister be punished, what security can the public have that any of their concerns will be ever managed either with honesty or sense?

\* Thoughts on a Parliamentary Reform, page 23.

*Jus.* Will

*Jus.* Will you not trust the protestations of great men?

*Far.* Did not all the opposition protest, that they were enemies to the Minister that carried on the American war; and yet they formed the Coalition?

*Jus.* You may also abuse the Coalition, but not too vehemently; a second coalition may become necessary for the good of the country.

*Far.* Did not our present worthy Minister oppose the receipt tax, and yet equally oppose its repeal?

*Jus.* You are not to suppose, that great men of superior understandings and immense abilities, will be fettered down to their words in the same slavish manner with a farmer or a mechanic.

*Far.* What, then, am I to trust to, if I must not even credit their own assertions?

*Jus.* Trust to! Have you forgotten a parliamentary control? The honour, the dignity, the wisdom, the integrity of that illustrious body, will never permit a Minister to injure the public.

*Far.* Have you not just now told me that a majority of parliament is generally in the pay of the Minister?

*Jus.* Hum!

*Far.* And will those who are base enough to receive money for betraying the public, arraign them-

themselves, and the very measures which they have been supporting ?

*Jus.* That may have been true of former Houses of Commons ; but you know the present is an extraordinary one, returned upon a solemn appeal to the wisdom and virtue of the people.

*Far.* Pray, Sir, who chose the majority of the last House of Commons ?

*Jus.* According to the most exact calculation, about six thousand electors.

*Far.* And who chose a majority of the present parliament ?

*Jus.* The same six thousand electors.

*Fra.* And who will choose a majority of the next parliament ?

*Jus.* The same six thousand electors.

*Far.* Are they lately become more honest or independent ?

*Jus.* I am afraid not.

*Far.* I see very little hope of good then for this unhappy nation, if we are still to be governed by a majority returned by six thousand corrupt electors, which majority is to be again bribed by a Minister.

*Jus.* But, farmer, you seem to be mistaken in one capital point, “ An independent House of Commons is no part of the English constitution, the excellence of which consists in being  
D “ com-

"composed of three powers, mutually dependent  
"on each other\*.

*Far.* Pray, how long, Sir, may the English constitution have existed?

*Jus.* According to some, it was instituted long before the Conquest, which happened in the year 1066; but according to its greatest enemies, ever since the year 1264, which makes its duration five hundred and twenty years†.

*Far.* And was it always customary for a Minister to bribe a majority?

*Jus.* I cannot say that. The unfortunate Charles I. was obliged to dissolve three parliaments, because they were refractory, and refused to vote any supplies till the grievances of the people had been redressed. Charles II. his son, was obliged to dissolve several parliaments for the same reason, although he was one of the inventors of parliamentary corruption. Even so late as the time of William III. a sufficient portion of this independent spirit still existed, to make that monarch entertain thoughts of relinquishing his new acquisition; and it is generally understood, that this great and necessary art did not receive its last per-

\* Thoughts on a Parliamentary Reform, p. 21.

† "The first summons of representatives of the people was  
"in the year 1264." Free Parliament, p. 12. Nothing is so  
easy to some people as positive assertions; whoever wishes to see  
this opinion substantially confuted, may consult that excellent  
and laborious book, Tyrrhell's Bibliotheca Politica.



fection till the year 1716, when an act was passed to prolong the duration of the House of Commons from three till seven years.

*Far.* It, indeed, appears very natural, that the seldomer any set of men are obliged to give an account of their behaviour, the more negligent they will become, and the more open to corruption. Were surveyors and churchwardens to give up their accounts only once in seven years, I am afraid they would be even worse than they are at present. But I do not understand how an independent House of Commons can be no part of the English constitution, when corruption has been so newly introduced.

*Jus.* What I said was not so much my own opinion as that of a very great man whose words I have quoted. Hear, then, how ably he goes on, "An independent House of Commons, in the last century, murdered the King, annihilated the Peers, and established the worst kind of democracy that ever existed; and the same confusion would infallibly be repeated, should we ever be so unfortunate as to see another \*!"

*Far.* The more shame for them if they did! I have heard something of that black and unfortunate affair. And did all the people approve of these proceedings?

*Jus.* Probably not a third.

\* Thoughts on a Parliamentary Reform, p. 210.

*Far.* Why, then, did not the King make use of his prerogative to dissolve that rebellious parliament, as His present Majesty did the late one, that wanted to name his Ministers, and plunder the East-India Company?

*Jus.* Because he had imprudently consented to make a law that they should not be dissolved without their own consent.

*Far.* Why, then, it appears to me, that all these mischiefs proceeded not from the independence of the parliament in being unbribed, but from the imprudence of the King in making them independent both of himself and his people.

*Jus.* There you are right; and it was a very small part even of that independent house that carried things to such extremities.

*Far.* Why, then, would an independent House of Commons now repeat these enormities?

*Jus.* To tell the truth, I believe nobody thinks there is the least danger; for such an house must necessarily desire the interest of themselves and the people; but the interest of both would concur to preserve the Sovereign in the possession of all his present prerogatives.

*Far.* Where, then, would be the evil, if instead of these six thousand electors that chuse a majority to be bribed by the Minister, the English people themselves were to chuse their own representatives, men of moral honesty and uncorrupt

corrupt characters, who would neither act contrary to their own consciences, nor suffer their constituents to be plundered and oppressed?

*Jus.* As to that, the great man whom I have just quoted observes, " I am firmly convinced, both by reason and long experience, that no alteration in the mode of election, or in the electors themselves, would produce any change in the elected \*.

*Far.* Has this gentleman, then, tried any other mode of election?

*Jus.* No, certainly.

*Far.* How, then, can he be convinced by experience, that no possible change might be effectual? He may, indeed, know, that all his own friends are what he has described; but is he acquainted with all the characters in the nation?

*Jus.* By no means; there are hundreds of respectable gentlemen in every part of England, who league with neither party, and are therefore little known beyond their own neighbourhood; and, to tell the truth, I should almost as soon go to a professed bawd to learn the state of chastity, as to a professed statesman to inquire about public virtue.

*Far.* Why, then, does this gentleman speak so decidedly upon the subject?

*Jus.* It is a kind of fashion to decry honesty and public spirit in this country.

\* Thoughts, on a Parliamentary Reform, p. 14.

*Far.* What,



*Far.* What, in a country which is confessedly ruined by the want of them; and where the only obstacle to our retrieving our affairs is, that the public has no confidence in any set of men whatever; merely because it is believed they are deficient in these qualifications?

*Jus.* I must own there are a little exaggeration and self-interest in the case. A gentleman out of power finds it necessary to make great professions about his own honesty and integrity; whatever is the spirit of the people he humours; whatever are their inclinations, he conforms to; if there are associations, such as you remember within these few years, he encourages them, vindicates them, harangues in them till he is hoarse. Every honest farmer is an ally in the glorious cause of reformation; every common labourer carries with him, even to the alehouse, the unalienable rights of nature and the dignity of the English constitution.

*Far.* Yes, I remember all these things. Our Squire himself turned orator, and read a speech out of his hat, to persuade all the freeholders that they ought to associate and reform the government; but, about a month after that, the parson and he posted about all the country to advise them to stay at home, and associate no longer, because the government wanted no reform at all.

*Jus.* The reason of that was, that in the meantime these gentlemen imagined that a change of ad-



administration was approaching, in which their friends would shuffle all the court-cards into their own hands. It is very plain that they did not wish to be interrupted in the important business of dividing all the honours and emoluments of the State among themselves; and therefore these meetings and associations must then appear troublesome things.

*Far.* And so I suppose these gentlemen, that understand shuffling so well, do not wish that we common people should believe there is any body in the nation more honest or consistent than themselves.

*Jus.* They are great friends, indeed, to order and good government, when they are in place.

*Far.* If that is the case, I should not entirely believe what any of them say; but do not many people desire to be in parliament?

*Jus.* Certainly. We see hundreds ruining themselves to come in; although when they are there, they are as absolute cyphers as the figures in the tapestry.

*Far.* And is it necessary to ruin oneself, in order to attain a seat in parliament?

*Jus.* Not always. Another very common way is, to attach yourself to some great man, or perhaps, to his favourite pimp or footman; whatever the great man does or says, though equally contrary to honesty and common sense, you must be sure to approve. If you have talents, you  
may

may speak and write for him and his party ; if you have none, you may, at least, bawl and canvass : impudence, baseness, and servility, are great qualifications in a public character ; with these, any man may hope to take his station in public life, by the time that he is fit for no other place but \*\*\*\*.

*Far.* So, then, according to your account, every man that has too much sense to ruin himself, and too much spirit to become a tool, is for ever excluded from the government of this country.

*Jus.* Not always. It sometimes happens that a gentleman of respectable character is called upon, by a majority of independent electors, to represent them ; such a person is sometimes chosen without bribery or solicitation.

*Far.* And does such a representative discharge his duty worse than those that bribe their electors, in order to sell themselves ?

*Jus.* In general much better. It is to this small body of independent gentlemen that we are frequently obliged for the safety of the country. However abandoned may be a Minister, he knows the weight and popularity they possess, and is afraid of driving them to extremities.

*Far.* But if there are some such men, why might there not be more ? If twenty, why not fifty ? If fifty, why not an hundred, or a majority of parliament ?

*Jus.* I can-

*Jus.* I cannot say it is absolutely impossible.

*Far.* Is money the only thing which is capable of making men act ?

*Jus.* No ; the desire of praise, and the fear of ridicule, are found to have the greatest effect.

*Far.* Pray, Sir, are not our army and navy, both officers and private men, extremely brave ?

*Jus.* At least, as any in the universe.

*Far.* Are they naturally more brave than other men ?

*Jus.* Certainly not ; they are promiscuously taken from all ranks.

*Far.* Perhaps it is the pay which they receive that makes them so.

*Jus.* The pay which they receive is so scanty, that it is scarcely sufficient to provide them the meanest necessities ; nor have the greatest part of them any active hopes of ever doing better. If they have no court friends, nor borough-interest, after having defended their country at the expence of youth, and health, and all the best blood in their veins, they may starve twenty years upon a subaltern's half-pay, and die in a jail at last.

*Far.* Then, perhaps, it is not true that they have fought so well ?

*Jus.* Farmer, farmer, you seem to know but little of the world ; there is no degree of hardship, difficulty, or danger, which these men shrink from. Place the sea in tempests before their eyes, with thousands of enemies, and death itself upon

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the billows, the British sailor scorns to ask assistance from the winds, or turn his back upon the foe.

*Far.* What, then, can give them this superiour degree of courage?

*Jus.* What? A sense of honour inculcated from their earliest years; a noble desire of winning applause from their fellow creatures, and, I really believe, a disinterested love of their country.

*Far.* Are they, then, more fools than knaves?

*Jus.* Farmer, you ask strange questions. The author whom I lately quoted, is a very great man, who writes for the improvement of the world.

*Far.* And would it much improve the world, if every body were to be of his opinion: our officers and sailors for instance?

*Jus.* I cannot say that. But what do you mean by questioning me about all these particulars?

*Far.* I mean no more than this, that if so many thousand men daily endure wounds and hardships, and death itself, from a sense of honour and a disinterested love of their country, it should not seem impossible to pick out a few gentlemen of independent fortunes, who would serve in parliament from the same motives. Has there never been any such thing as integrity known in public men?

*Jus.* There certainly have been periods in different nations, when something very like it has been



been observed. Even the great man I quoted allows that.

*Far.* And has it produced any very evil consequences?

*Jus.* No. At home it has made the people happy, by just and equal laws; by correcting the abuses which will arise in every government; by encouraging genius, arts, and agriculture; by extending commerce to remotest nations; and by giving energy to every principle both of improvement and defence. Abroad, it has made them respected for their justice, and feared for their intrepidity. This spirit, and this alone, first raised and fostered the free States of Greece; then emigrating to Italy, it nursed the Roman republic to such a degree of greatness, as overshadowed the world. Almost within our own memory, it laid the foundations of Venice, Switzerland, and Holland; three States, which, though for different reasons, will always be the admiration of mankind.

*Far.* Your worship grows quite an orator; I protest I could listen to you for a day together, when you talk so finely.

*Jus.* Farmer, I did not think you had so much taste. Now listen to me again. If these are the consequences of public integrity, what do ye imagine must be the effects of the contrary principle?

*Far.* Nothing very good, I warrant; much such another state of things as we have here at home.

*Jus.* I do not say that; but when once a government becomes intirely corrupted, adieu to every thing great and noble in the people. Avarice, that lowest and most groveling of the passions, becomes the ruling idol of the nation. Gold is the universal god which takes possession of every breast, and annihilates every other principle. This warps the statesman from the public good, unhinges all the laws, and pollutes the streams of justice, even in their source. Can a people expect to be protected by such a government in their liberties? Those very liberties are the merchandize of corruption, delivered piecemeal to the spoiler, or given up at once, without a contest, by those who were intrusted with their protection. Can property be secure or agriculture and commerce flourish? Wherever, says the scripture, is the carcase, there will the eagles be gathered together; and what a flight of eagles, vultures, and every unclean bird of prey will be collected, where all authority is but the prerogative to plunder, and subordination means no more than the sad necessity of endurance!

*Far.* Pray, your worship, are not those vultures and unclean birds very like excisemen?

*Jus.* This, farmer, is a faithful picture even of the greatest empires, where the government has  
once

once become entirely corrupted. All the bands that hold human beings together, are either relaxed by interest, or snapped by oppression. The great interests of society are alternately neglected and betrayed; for where all abilities are prostituted, all virtue, but the ridicule of fools or scoff of villains, neither ability nor virtue will long be found. To complete the whole, men are forbidden the use either of reason or of arms; lest the one should make them doubt the title of their masters to oppress, or the other enable them to oppose their outrages. Thus is the State gradually deprived of every resource, either for happiness or defence; and delivered up an unresisting prey to the first invader.

*Far.* Your worship has drawn a dreadful picture indeed; but if this is the case, would it not be better if our representatives were a little less accessible to the influence of a Minister?

*Jus.* I grant it. A celebrated writer observes, "The constant habit of authority, and the unfrequency of elections, have tended very much to draw the House of Commons towards the character of a standing senate\*."

*Far.* What may be the meaning of a standing senate?

*Jus.* The senate was that body of men which jointly, with the assemblies of the people, pos-

\* Thoughts on the Cause of the present Discontents, p. 70.



ferred the supreme authority at Rome. In the beginning, that is, while it was very much under the influence of the people, though not immediately chosen by them, it produced many of the most distinguished characters we read of. But when all public virtue had been gradually extinguished, and the republican form of government destroyed, though the senate still subsisted, it became the most abject and contemptible set of sycophants that any history describes.

*Far.* I do not wonder at that.

*Jus.* Hence every assembly of men, in whom the powers of government are vested, are called a standing senate, unless they are frequently renewed and chosen by the people.

*Far.* And what does experience teach us relative to the conduct of these standing senates?

*Jus.* That they will always abuse every degree of power with which they are intrusted for public purposes, to their own private advantage; "because all men possessed of an uncontrolled discretionary power leading to the aggrandisement and profit of their own body, have always abused it\*." Thus, in the last century, a standing senate attempted to destroy both king and nobles; and in the present, we see what lengths they were lately going about the East-India bill.

\* Thoughts on the Cause of the present Discontents, p. 84.

*Far.* Might



*Far.* Might not that be from a principle of public virtue?

*Jus.* When there is an immediate interest playing before the eyes of a set of men who were never remarkable for great integrity, he must know very little indeed of the world, who will attribute their conduct to principle.

*Far.* But had not there been very great abuses, do you believe, in the East-India Company? We read of such atrocious acts as make one's hair stand an end!

*Jus.* I do not doubt it. Is it possible for a set of merchants in Leadenhall-street, to govern a large nation at the other end of the world, without committing innumerable instances of misconduct?

*Far.* I should think not; since I never heard of a gentleman that could properly manage even a large farm, by the means of a steward or a bailiff, without living upon it himself! Why, then, did your worship oppose the new parliamentary regulations?

*Jus.* Because neither I, nor any man who had common sense, ever imagined that the regulations meant any thing more than dividing the spoils of the Company between a majority and a Minister. If regulations were necessary, why did not parliament make them, and then punish the East-India Company and their servants if they disobeyed?

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If they have never made a single example of any public criminal, even while they have had the greatest enmity to the Company, is it very likely they should do it, when every act that was done would bear the impresson of their own virtuous majority! A writer of the first talents in the kingdom observes, "Thus the control of parliament, upon the executory power, is lost, because parliament is made to partake in every considerable act of government\*." It was, therefore, a most excellent method of reforming the Company, to identify its executive with the controlling powers; that is, to give them both up to those who have let every species of control, with which they were invested by the constitution, slip through their fingers, merely because they were too intimately connected with the executory part.

*Far.* Would it not, then, be a great improvement, if the House of Commons were to have more connection with the people, and less with the Minister?

*Jus.* They, indeed, should "endeavour to keep that house, for its existence, for its powers, and its privileges, as independent of every other, and as dependent upon themselves, as possible†." The only difficulty is, how to effect so desirable an end.

\* Thoughts on the Cause of the present Discontents, p. 71.

† Ibid, p. 117.

*Far.* Why, I should think, if elections were more frequent, and representatives more equally chosen, it might have a wonderful effect.

*Jus.* "Reason does not persuade me that electors, the most ignorant and profligate, the most necessitous and venal, would return members more uncorrupt than the present\*."

*Far.* Pray, Sir, can any thing be more or less than itself?

*Jus.* Why do you ask the question?

*Far.* Because, when I propose that the whole people should equally chuse their representatives, you talk of electors *the most ignorant and profligate, the most necessitous and venal*. Or is the whole nation, collectively taken, more ignorant, profligate, necessitous and venal, than those who chuse our representatives at present?

*Jus.* You would have "labourers and manufacturers of every kind, above and under ground, weavers from their looms, and miners from their tinneries and coal pits, sailors from their ships, and soldiers from their quarters, to whom we must add, thousands of thieves, smugglers, rogues, vagabonds, and vagrants†."

*Far.* And pray who would you have but labourers and manufacturers, and miners, and soldiers and sailors? Or would you gentlemen take

\* *Thoughts on a Parliamentary Reform*, p. 14.

† *Ibid*, p. 6.



the trouble of digging the earth, and making cloaths and houses for yourselves ; or of fighting your own battles, or of fetching every article you want from every quarter of the globe ?

*Jus.* That would not be quite so eligible.

*Far.* Why, then, do you stigmatise all those who feed, who cloath, who shelter, who defend you, as being universally profligate ?

*Jus.* It is a philosophical way of talking much in use at present.

*Far.* I am sure the people that use such language, however philosophical they may be, are no Christians.

*Jus.* There you are mistaken, farmer. The gentleman who wrote this, is one of the best Christians in the kingdom.

*Far.* That's impossible. Was not Christ himself reputed the son of a carpenter ? Did he not chuse his disciples out of the lowest orders of the people ? Does he not particularly address himself to the poor ? Does he not declare, that it is easier for a camel to pass through the eye of a needle, than for a rich man to enter into the kingdom of heaven ?

*Jus.* It might have been so formerly ; but probably this gentleman imagines that times are very much altered.

*Far.* They are, indeed, or else one who calls himself a Christian, would hardly treat his fellow  
creatures



creatures with so much arrogance. But may I ask your worship, how the poor commonly live in your neighbourhood?

*Jus.* In summer, they rise at three, four, or five o'clock; in winter, at six, or earlier. They then go out, in the worst weather, to hedge, or ditch, or plough, or cut wood; they generally dine upon bread and cheese and water, beer being too costly an article at the present price of malt; they earn from fourteen to eighteen pence a day, out of which they frequently have to maintain six or seven children.

*Far.* What are their pleasures and amusements?

*Jus.* They have very little time for either. Sometimes, however, they go to an alehouse on a Saturday or Sunday evening, and spend a few pence in beer.

*Far.* But why is this allowed? the justices, I thought, had a discretionary power over public houses.

*Jus.* That's true. But the revenue! Farmer—the revenue! They are very bad things, indeed; but the revenue!

*Far.* And how may the rich, Sir, live in town? We all know how they live in the country.

*Jus.* In general, they rise at eleven, twelve, or one; saunter about all the morning, or, perhaps, ride a few miles to get an appetite against dinner. Their dinners are composed of every thing most costly, rare, and stimulative to the palate; the

produce of earth, air, water ; of every country and of every sea ; they drink the most exquisite wines, and waste as much at one meal as would maintain a parish for a fortnight, and probably damn the bill of fare at last. In the evenings, the female part proceed, regularly, to public diversions, such as operas, plays, Ranelagh, the dancing dogs, or the puppet shew ; for all in turn have been the admiration of the most refined part of this country ; while the men are either employed in the same manner, or else in public business ; that is, giving their votes for or against questions which they have never considered, and, frequently, which they have not taken the trouble of hearing debated. These, farmer, with a few other items of running horses, intrigues, divorces, gaming, and other employments equally innocent, constitute the life of a considerable number of the rich in this country.

*Far.* Surely such a way of life must be very expensive ?

*Jus.* Expensive ! Many destroy their health, their credit, their estate, by the time they are thirty ; and then if they can find no honest provision under government, a voyage to the continent, or a pistol, is the only resource.

*Far.* I am much obliged to your worship, indeed, for the detail ; without it, I never should have conceived that the poor are so much more *profligate and venal* than their betters.

*Jus.* Odso !

*Jus.* Odso! I believe I have gone a little too far.—However, what do ye say to smugglers and thieves? That was an home stroke at the speculators.

*Far.* Have you no smugglers, then, in a certain honourable house?

*Jus.* In a civil way, perhaps.—On a return from Paris, an embroidered coat, or a few pair of laced ruffles.—But this is a mere trifle.

*Far.* Was the gentleman who rails so much at smugglers, in parliament?

*Jus.* Certainly; how should he else describe it so naturally, “They will be more influenced by the views of interest and ambition; they will split into faction and parties, and list under contending leaders, and sometimes prefer their interest, or their own advantage, to that of their country\*.”

*Far.* Do you think, Sir, that this gentleman never gave a frank away?

*Jus.* A frank? To be sure.—What member of parliament ever refused one to his friends and constituents?

*Far.* And is not this defrauding the revenue of the most equitable tax in the world, and abusing a privilege committed to his honour, and therefore so much the more sacred? Do such men talk

\* Thoughts on a Parliamentary Reform, p. 17.

of smugglers? Besides, you know, the gabelle upon tea has put an end to that race of men.

*Jus.* Farmer, farmer, that grey coat of thine hides a deal of malice.

*Far.* Your worship is so good as to draw these things out of me, otherwise, I am a poor ignorant fellow. Pray, how much may your worship have lost by thieves of every denomination?

*Jus.* Three sacks of turnips stolen from me at sundry times, besides a peck of pippins and a bushel of potatoes. Once my hen roost was broken open, but being election time, there was nothing but an old gander and five addled eggs; however I transported the rascal that did it; and once I was put into bodily fear by being stopped upon the highway; however I gave the villain nothing but a tobacco stopper, three copper medals, and a groat in Birmingham halfpence.

*Far.* And how much may your worship have lost by the American war?

*Jus.* Alas! ten years purchase on all my landed property; thirty per cent. upon all my stock, besides a perpetuity of taxes upon every thing I eat, drink, or wear.

*Far.* Did this gentleman vote for that war?

*Jus.* To be sure; he had a place under the government.

*Far.* Should he, then, have been so severe upon thieves?

*Jus.* Well,



*Jus.* Well, well, we will leave this matter. But "figure to yourself all these respectable characters let loose in one day throughout the kingdom, and such a scene of confusion, of drunkenness and riot, of rapine, murder, and conflagration, will present itself, as must shock us with horror even in imagination \*."

*Far.* Pray, Sir, then, are these people tied up at present, or did any one ever wish to open the prisons and let loose those that are confined for crimes?

*Jus.* I cannot say that entirely.

*Far.* And do not the greater part of the people of this kingdom vote every year for churchwardens and parish officers?

*Jus.* They do.

*Far.* And does your worship ever hear of rapines and murders, and conflagrations, in consequence of these elections?

*Jus.* I cannot say I ever heard of any great number.

*Far.* Do not all the people of the kingdom meet every week at divine service †?

*Jus.* A very considerable number of them at least.

*Far.* I have heard that before the American war, the inhabitants of all the colonies used to

\* Thoughts on a Parliamentary Reform, p. 17.

† See an excellent pamphlet entitled, Internal Evidence. By John Cartwright, Esq.

meet every year to chuse their representatives, without any of these dreadful calamities which your worship mentions.

*Jus.* What, farmer, do you dare to quote the example of those incendiaries on the other side the water?

*Far.* I do not quote their rebellion as an example for us; but I think what is done there, may be repeated at home. Are they so much more virtuous and honest than we are?

*Jus.* There is some little difficulty in answering that question. While we were at war with them, it was necessary to represent them as the vilest scoundrels and ragamuffins in the universe. At present, many ingenious men who have written against the speculators, have found it necessary to represent the whole English nation in the same light.

*Far.* That appears to me rather an oversight; for if we are so very venal and profligate, no other nation that has any regard for its character should have any connection with us; your worship, I am sure, would not send to the county jail for a steward or a bailiff.

*Jus.* To be sure not. But we are not to take every thing literally which escapes gentlemen in the heat of argument.

*Far.* Then I should infer that all these dangers are entirely chimerical, and have no existence out of the author's head. But may I tell your wor-  
ship

ship freely, whom these worthy gentlemen put me in mind of ?

*Jus.* Aye, farmer, say what you please.

*Far.* It is, then, neither more nor less than the devil.

*Jus.* The devil !

*Far.* Yes, Sir. It is his peculiar character to punish men for the very sins which he has persuaded them to commit. In the same manner, there is no degree of scurrility and abuse which you, gentlemen, do not think yourselves justified in throwing upon your inferiors. They are venal, ignorant, and profligate, and even beasts, as I have heard a reverend divine call them. And yet, when a fair estimation is made, it appears that they habitually practise several virtues which their betters are totally unacquainted with, and have scarcely any vices which they do not learn from yourselves.

*Jus.* From us, farmer ?

*Far.* What is it that you have been describing, but a life of the most complete idleness, gluttony, and frivolity; the indulgence of every passion which most degrades us, and the absence of every principle, either of religion, morality, or public spirit ? So great is the contagion of your example, that it extends to all about you. The laborious and simple youth that we are continually sending you out of the country, are, by a few months residence in your houses, and imitation of your manners, transformed into the most worthless

and contemptible characters: idle, luxurious, delicate, and abandoned, as their betters. Many an honest and laborious parent is left to weep in tears of blood, the hour when a misguided ambition first made him consent to send his child even into the service of a gentleman. This supplies the gibbets with wretches too lightly hurried into eternity, and the streets with prostitutes. If the poor are ignorant, why do you not instruct them? If they are profligate, why do you not reform them by your example? Instead of that, you content yourselves with railing at us, for the very vices with which you are infected to an hundred times greater degree. If you come into the country, it is only to rack your tenants, display your lean, inhospitable finery to the neighbourhood, and, probably, set an example of your utter contempt of all laws, human and divine. The very clergy that receive the tenth part of the produce of the earth, in order to reform and instruct us, are contented with shearing their flocks once a year, and then hurrying back to town to preach against the beasts of the people.

*Jus.* Farmer, you are bitter.

*Far.* I am a plain, simple man, Sir; but I have eyes and ears, and a habit of speaking the truth. But what I most wonder at is, the lengths that you indulge yourselves in against all the lower classes, merely for sometimes doing what you habitually and publicly practise every day of your lives.

*Jus.* What



*Jus.* What is that, farmer?

*Far.* Neither more nor less than rank and avowed corruption. If a poor man receives a few guineas for his vote, there is no human language too foul to stigmatise his conduct\*; but if a gentleman of the best education, and three thousand a year fortune, takes money of a corrupt Minister to ruin the nation, it is only, forsooth, that he *will not serve his country for nothing*†. Do you imagine, then, that because you learn to prate and chatter in town, and that idly and ignorantly enough, God knows, if I may pretend to judge of your speeches, that the rest of the world have even lost their common sense, and will see no farther than a few of your conceited, self-sufficient authors chuse they should? As to corruption, there is a great deal too much of it every where; but who are the authors, the promoters, the supporters of it? Who, I wonder, but yourselves? It is you that have almost extirpated virtue and honesty from the country, and now you

\* "Spent in the infamous and disagreeable compliance with the low habits of venal wretches. Dodington's Diary, p. 285.

† "For I was determined to make some sort of figure in life: I earnestly wished it might be under his protection; but if that could not be, I must make some figure." Ibid. p. 229.

"I cannot believe that so just and generous a prince would accept a poor subject's offers of service, and suffer him to carry them into execution, at so great an expence, with a resolution, absolutely, to exclude him from all sorts of common favour. Ibid. p. 299.

"As he was at the head of the Treasury, I should chuse a seat there if it was vacant, sooner than any thing." Ibid.

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would lay the blame upon a few silly country fellows or mechanics, that only act wrong by imitation. What election do we ever see, that the gentlemen have not recourse to the most dishonest arts; setting open public houses, calling the industrious from their work, lying, promising, persuading, canting, inveigling, threatening, bribing —

*Jus.* Farmer! Farmer!

*Far.* Your worship must give me leave. If a man should by accident be honest, of which even now there are many more examples among us than among the rich, how many engines are set to work to confound and corrupt him! Large sums of money are displayed to entice his poverty, under the most specious pretences; entertainments for his love of good cheer; and golden promises of mighty things to be done hereafter. If these are insufficient, you do not scruple to practise even upon the vanity of his wife or daughter; to ensnare them by finery, and to debauch their morals, in order to corrupt the husband or father. Then your generosity is equal to your disinterestedness; for should a wretched farmer that occupies a corner of your grounds, dare to balance between his landlord's choice and his own conscience, though on the one side there was a scoundrel guilty of every human crime, and on the other, a saint or even an angel, you know there is no degree of persecution which he must not expect.

*Jus.* I can-

*Jus.* I cannot entirely deny the truth of what you say. But neither will you deny that wherever mankind are assembled in large bodies, disorders of various kinds and outrages are the consequence.

*Far.* Why, then, do not you legislators exert your wisdom to remedy and prevent them? I know nobody that has ever been their apologist, but will you seriously affirm, that it has ever been the aim of government to prevent them by wise and wholesome regulations? Why is the use of the ballot so totally unknown in this country? Why is the poll not taken in different places? Why —

*Jus.* Would you have us violate the constitution?

*Far.* The constitution may indeed be sacred, but I never heard that the abuses were. A most worthy and disinterested gentleman has made the tour of all the prisons in Europe to examine into the state of the prisoners, and suggest improvements that may be made in the method of treating them; will all justice be at an end, should his advice be taken and plans pursued?

*Jus.* So far from it, that both the morals and the health of these unhappy wretches will receive the greatest advantage.

*Far.* Yet I have heard that many of the turnkeys murmur and threaten us with a variety of evils from these projected innovations.

*Jus.* Can



*Jus.* Can you imagine that any set of men will submit, in an instant, to see the whole government subverted, in order to introduce these new-fangled systems of reformation?

*Far.* Why, then, do they not give it at least a partial trial? An experiment in a single town or county would shew the candour of the legislators, and could subvert nothing.

*Jus.* It would certainly not answer; and then consider the infinite mischiefs!

*Far.* What, from a single experiment? Surely the mischiefs could not be infinite; and they would silence every reformer for the future. We have tried your proposal, it might be said, and you see the consequences.

*Jus.* The constitution, the constitution, the constitution!

*Far.* But many people say, that these necessary alterations would not violate the constitution, but only bring it back to what it originally was. They say that the present inequality of representation grossly violates every principle of it. They ask why the constitution is continually to be pleaded, when the people demand their rights, and never when the question is about taking them away? Whether representatives that used to consult their constituents about a trifling subsidy before they granted it, can, constitutionally, give away an hundred millions without taking any opinion but their own? Whether an act, at present, to shorten the duration of parliaments would be



be more unconstitutional than the septennial bill, by which an House of Commons chose itself for four additional years?

*Jus.* I don't recollect the answer to all these questions in Free Parliaments, Dialogue on the actual State, and Thoughts upon a Parliamentary Reform; but you may consult these excellent treatises.

*Far.* I am very little acquainted with books; and what I pick up is by conversation with wiser heads than my own. But upon the whole, say they, let us consult experience upon this question: so long as even any tolerable connection was kept up between the representatives and the people, the parliament was revered, as constituting the bulwark of public liberty; nor did it ever fail to administer the property of its constituents with oeconomy, to exert a constitutional control over Ministers, and to demand redress of every grievance. But, since the year 1716, that representatives have assumed the power of chusing themselves, they have run the nation above two hundred millions in debt; they have imposed more taxes than had been known even from the Conquest to that very period; the revenue laws are become a monster armed at all points with death, or ruinous penalties, that has already devoured almost all the property and industry in the kingdom, and is still gaping after more; and the sole business of our representatives, instead of restraining

ing his voracity, seems to be to litter him down and curry his stinking carcase.

*Jus.* Farmer, where did you learn all this acrimony? There may be some little truth in what you say, but depend upon it, it is much exaggerated by malice and discontent.

*Far.* Very likely, your worship; and then you, who converse with so many able politicians, will have the goodness to set me right. In a word, say they, what are the grievances that have been redressed ever since the Revolution and the Bill of Rights, which gave the people some faint shadow of a constitution established by parliamentary authority? Not so many as we have frequently seen the price of a single subsidy, under the most arbitrary princes. Under one pretence or another, every thing which is most inimical to the spirit of a free country is daily gaining ground; the most trifling offences are made acts of felony, and punished with death; every new session brings with it not only some new imposition, but some new capital offence; and, one after another, the house of every Englishman, which ought to be his castle and defence, is laid open by day, by night, without even the formalities of the civil authority, or the intervention of a constable.

*Jus.* I cannot entirely contradict what you say. By the last session it is made felony and transportation for seven years, to alter a single letter upon the direction of a frank. Excise officers are empowered to enter the houses of distillers, soap-makers

makers, &c. by night as well as day, with other salutary regulations, for the improvement of the revenue.

*Far.* So, then, the improvement of the revenue is an object to which the whole liberties of the English people are, one after another, to be offered up, till every man becomes a greater slave than the inhabitants of the most arbitrary countries. But such governments, they say, are now knocking off the shackles of their subjects, and inviting men and industry, by the only baits which can attract them, a rational liberty and security for their property; even the house of Austria is encouraging toleration, and France giving up her *taille* and *gabelle*; while all the policy of this free country seems to consist in picking up and adopting their most absurd and tyrannical regulations. Just as if a council of health, said Mr. Homespun, should purchase the cast cloaths of a pest-house, and order them to be distributed among the inhabitants of an healthy city!

*Jus.* But you know all this is only for the support of credit.

*Far.* I am very little judge of these things; but if we consider the general effects of government, it is very little comfort to the people, that one Minister contracts the debt, and another pays it by every oppressive method; while our representatives look idly on, or assist him in his career. And as to public credit, I have heard it asked, what good it does the nation, besides enabling

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Ministers to form extravagant schemes, and mortgage the public property for ages? Experience, say they, has shewn, for almost a century, that it is the spirit of the government continually to increase the public debts, without ever thinking of reducing them; now this credit is the very engine which is made use of for the purpose; and therefore the sooner that bursts, which ~~must~~ necessarily burst one time or another, the better.

*Jus.* Farmer, you should read the excellent speeches which are published in the newspapers.

*Far.* I have already read them till I am tired; and I can find little or nothing of that spirit which becomes Englishmen. When the Minister comes with his budget, which is never opened without some fresh wound to industry and freedom, all the gentlemen on his side of the question begin gabbling, as if they were posted there on purpose; What an excellent tax! cries one; Charming! says a second; that is so moderate, that it will have a most salutary effect upon agriculture. What pity, cries a third, that it is not doubled! And then, says a fourth, Did you ever see any thing so fine as the tax upon horses and cart wheels? But I think our excellent Minister has been rather too moderate in not extending it to wheelbarrows and jack asses. Very true, indeed, answers a fifth, how can agriculture thrive, if the government does not assist the farmers



mers with revenue officers to superintend their cart houses and stables ?

*Jus.* Well, well ; but the Opposition, you know, does not let things pass so easily.

*Far.* Yes ; because we are not taxed enough, the gentlemen of the Opposition generally furnish new hints, which the Minister promises to make use of the next opportunity.

*Jus.* But what would you have done by your representatives ? Money must at all events be raised.

*Far.* That position was not so universally admitted, when members of parliament used to declare that they could not give their consent to new requisitions, without consulting their constituents. It was then thought reasonable to demand some satisfactory account of what had been already given, before they exerted their generosity again.

*Jus.* But you know all parliamentary control is at an end.

*Far.* Indeed I believe it ; and therefore the people, I think, if a free government is to exist any longer, have a right to demand its restoration : otherwise, what security remains that the same eternal juggle shall not be played between Ministers and parliaments, till we have neither freedom nor property left ?

*Jus.* Do you doubt the present government ?

*Far.* It does not become me to give an opinion

of our present Ministers; but I cannot even praise or confide in them without harbouring disagreeable suspicions. Our present worthy Minister was one of the loudest opposers of the American war, and the profusion of that administration which supported it, consequently, if I approve his conduct, I can have no very good opinion of that majority which he opposed. He, in conjunction with a noble Lord, now out of office, produced the peace; which, to my simple apprehension, was the best measure we have experienced these twenty years. But for this very peace, he and his colleagues were turned out of office by a majority of parliament, to make way for the virtuous Coalition, who carried matters to such extremities, that the King was obliged to dissolve the Parliament, and appeal to the people themselves, as being more wise or honest than those that call themselves their representatives.

*Jus.* Does this kind of language, do you think, become a farmer, in speaking of so great, so dignified, so august a body?

*Far.* I use no language, your worship, which I and the rest of my fellows have not heard from all the friends to the present government. I believe there is not a borough town in England which has not heard them abuse the Coalition and the corrupt Majority, and assure us, that if we would but chuse them, they would never give a single vote *against* the administration. Therefore

fore, as all parties are agreed in this, that scarcely any thing has been done these twenty years, unless by bribery and corruption, I know not why we should not take the words of gentlemen who understand these matters so well. And as your worship has not been able to point out any security that we can pretend to, for the future, I know not whom the people should trust to but themselves; for they have been so grossly deceived, insulted, and betrayed, that I fear they have no longer any confidence in that name which was once so dear and sacred.

*Jus.* What evidence have you of this?

*Far.* The evidence of all with whom I ever conversed: of the members themselves in their speeches, who cannot conceal their knowledge of this unpalatable truth; and the almost united voice of the whole people, who, in a late celebrated dispute, sided with the crown against their own pretended representatives.

*Jus.* I cannot deny this.

*Far.* This is all these gentlemen gain by separating themselves from the people. They forget their origin, and imagine they can kick the ladder away on which they mounted to greatness; but in this they are as short sighted as they are selfish and ungrateful. A parliament that really represents a great and powerful nation, is one of the most august bodies in the universe; because it is invested with all the strength and importance of  
its

its constituents. Possessing the public confidence, and speaking the real sentiments of the people, it will lift a virtuous Minister to glory, and either restrain a bad one, or chastize him for his crimes. But if they do not represent the nation, whom is it that they represent? A few insignificant boroughs and deserted farm houses? The English people are not quite so stupid as to identify their opinions and interest with that of the public, or to mistake the voice of a few lawyers, younger brothers of peers, and country gentlemen that nominate themselves, for that of a great nation.

*Jus.* Have you never heard of virtual representation, farmer?

*Far.* Virtual representation? I believe I have heard the term, but I profess I do not understand it.

*Jus.* It is true that we cannot defend the present elections as really representing the people; and therefore we think it better to say that representation is no part of the constitution; or that it is only a kind of fiction. But this virtual representation is the most convenient thing in the world; twenty or thirty boroughs may, in this manner, nominate representatives for the whole nation, for the kingdom of Ireland, or the continent of America; because, when once the gentlemen get into parliament, they are bound to represent the dignity and interest of the whole people.

*Far.* Might



*Far.* Might they not represent the kingdom of France, or Spain, or Portugal, in the same manner?

*Jus.* To be sure they might; and this is the peculiar convenience of this kind of representation, that its blessings may be extended to any quarter of the globe without the least trouble.

*Far.* And supposing, by any unexpected change, the Minister were to nominate half, or two thirds of the House of Commons, would not this virtual representation go on just as it did before?

*Jus.* To be sure, the term is very extensive; it will bear a great variety of interpretations.

*Far.* And supposing there were no House of Commons at all, might not the Minister say, that he virtually represented the House, just as they virtually represented the people; because he would take the greatest imaginable care of the safety, interest, and dignity of their constituents?

*Jus.* This is a case which, I believe, has not yet been thought of; whenever it happens, my ingenious friends will, no doubt, prove that it is perfectly constitutional.

*Far.* May I ask your worship one question?

*Jus.* Certainly.

*Far.* Should a physician attempt to describe the natural and perfect state of the human body, and gravely advance that the use of the legs was not walking, because he had observed so many  
gouty

gouty patients among his acquaintance, what would you say to him?

*Jus.* I should only laugh at the grave ignorance of a man that pretended to describe so wonderful a piece of mechanism as the human body, and yet could not distinguish a state of disease from that of health and nature.

*Far.* Suppose, also, that a Londoner, very little acquainted with country affairs, was to walk over my farm, and having observed, here and there, a weed among the crops, and a fallow or two covered all over with them, he should return home and assert, that it was not the intention of farmers to cultivate corn, but weeds?

*Jus.* He would be very much, and very justly, laughed at, for confounding those evils and inconveniencies which no human industry can prevent, with the end and design of agriculture.

*Far.* Yet this appears to me to be exactly the method of these gentlemen with their virtual representation. They sum up all the corruptions of the English constitution, corruptions which have been long seen and complained of by all the sensible and honest part of the nation, and would persuade us that these abuses compose the essence of government. Yet when we look back to the English history, we find at the earliest period of its records, that the House of Commons was called the representative of the nation; not from some fanciful play of words or fiction, which was

never

never thought of by our plainer ancestors, but because the members were really chosen by the people, imprest with their spirit, governed by ideas of common interest, and actually in the habit of continually consulting their constituents. For this reason they were always acknowledged to speak the sentiments of the nation, both by the King and people. Is there a single example in all the earlier ages of history in which the voice of the Commons and that of the nation was not allowed to be the same, unless, in one or two instances, where illegal influence was first used to pack an house, and then the house itself bribed to betray the privileges of the people?

*Jus.* It is the nineteenth article of accusation against the unfortunate Richard II. that “although, by law and custom, the people ought to be free to chuse knights to represent them in parliament, to propound their grievances, and provide remedies for them; yet the said King, that he might obtain his own rash will in his parliaments, directed by writs often to the Sheriffs, to send such as he named, some of whom he induced by favours, others by threats and terrors, others by bribes, to consent to things prejudicial to the kingdom, and grievous to the people; and especially by granting to him the subsidy of wool for his life, and another subsidy



"for certain years, too much oppressing the people \*."

*Far.* The gentlemen that framed this charge, were, probably, not acquainted with the refinements of virtual representation. But, surely, the present race of writers imagine that no man can read, or understand common sense, except themselves; otherwise they would scarcely attempt to confound us by arguments that are so easily answered. What more could the English, or any other people desire, than to be represented in such a manner, that the parliament should really speak their language, propound their grievances, and manage the public property in the same manner as they would have managed it themselves. Did ever any people demand a redress of grievances which not only were not actually existent, but could not even enter into their imaginations? For how should they conceive that a set of men who had been for ages their friends, their champions, their best defenders, would one day become their most inveterate enemies, and aim at an independence still more unnatural than that of America? Besides, what is the reason that any one can presume the state of representation was not originally as exact as human wisdom could contrive? It certainly was as exact as human foresight could conceive was necessary.

\* *Rapin*, vol. iv. p. 31.



*Jus.* Because it is not so at present.

*Far.* And had it been at first adapted with the most arithmetical exactness, must not this have been the case? Even within the memory of man, the face of the kingdom is almost entirely altered by the vicissitudes of trade and the increase of population. Will any one pretend the land tax was not intended to be an equal valuation and assessment, because it is so unequal at present? Or is it believed that there is some actual virtue or quality in one soil, that it ought to pay four shillings in the pound; and in another, that it should only pay a penny?

*Jus.* I believe not; and many have wished the inequalities should be rectified, provided it was done cautiously and by degrees.

*Far.* And why should not the inequalities of representation be rectified as well? It is the principle of the English constitution, that the power of the people should operate as a control upon the government; this is the origin and aim of all representation; and where that end is properly attained, the representation is sufficiently perfect. But to suppose the principle is to be sacrificed to this or that accidental method of exerting it, is just as ridiculous as to imagine the laws were made for the sake of counsellors and attornies, or an army raised, embodied, and disciplined, on account of contractors that find the, or tailors that cut out the uniforms.

*Jus.* And what might be expected, were this reformation to take place?

*Far.* If not all the good which some worthy men have promised to themselves, at least the most salutary effects; the people would again have confidence in their representatives and in their governors: taxed and burdened as they are, beyond what, I believe, was ever experienced by any other nation, they would not refuse their little all, if that all was necessary, to the service of the State, and proper security given them that it should be faithfully administered.

*Jus.* You promise great things, farmer.

*Far.* I promise no more than I can answer for the performance of. The English people are generous, affectionate, and public spirited: place before them an object worthy of their enthusiasm, there is no people in the universe that will go greater lengths, or make more sacrifices; but they, with justice, require to be treated like men, and not like brutes or slaves. Can those that systematically vilify and betray them, pretend to merit their confidence? Or should men who allow no human principle but self-interest, be surprised that others acknowledge it as well as themselves?

*Jus.* There is something in all this.

*Far.* Those that accuse the whole people of being venal and profligate, are equally ignorant of

of human nature and of the power of government ; nor could a nation that was universally corrupt exist at all. What would be the state of things, where all justice was sold, where every officer took pay to desert his standard, and every commander accepted bribes from the enemy ; where mercantile faith did not exist, and private honesty was unknown ? The very persons that draw these diabolical pictures, do not believe in their resemblance ; else why does every man in his speech to the people, and even to the parliament, profess that public virtue, whose existence he denies in private ? Believe me, Sir, there are corrupt and profligate individuals, but the spirit of the people is neither corrupt nor profligate. Let but the government itself exhibit an example of public virtue, and see if the people lag behind : but till this is done, we have the best reason in the world to believe that the fault is not in our degeneracy, but in your own vices.

*Jus.* But would not the gentry of the kingdom be losers by widening the basis of representation ?

*Far.* I should rather imagine the contrary ; for where could the choice of the people fall, except upon that body ? You do not, surely, distrust your own abilities and importance so far, as to fear the competition of tradesmen and farmers ? And were a generous and elevated spirit of ambition to succeed to the vile stock-jobbing principles of buying and selling



selling boroughs, I cannot conceive that either your own body, or the public, would be a loser.

*Jus.* But should this reformation not take place?

*Far.* Without it, all public attempts will be like repairing a crazy house, without meddling with the foundation. Should a corrupt Minister again unite with a bribed majority, we know what we have to expect : and should even a virtuous Minister arise, he will be either forced back by the stream he has to encounter, or forced forward in spite of his own principles.

*Jus.* At all events, the aristocratical gentlemen will comfort themselves with the possession of their boroughs and their family interest.

*Far.* That is not quite so certain. Should parliaments become universally odious to the people, will any one answer for their duration? They seem to me to depend as necessarily upon the public opinion for their support, as a general does upon his army. Hitherto the people only suspect their venality ; they still forget the past, and form specious expectations of the future. But when these expectations are finally extinguished, when nothing but open, avowed, and general corruption surrounds us, who can answer for the consequences? Have we no Danish blood in our veins?

*Jus.* I do



*Jus.* I do not understand you. *The Danes, indeed, disgusted with the tyranny of the higher orders, went, last century, and surrendered all their liberties to the King; and from that time, the government of that country, which before was free, has become an absolute monarchy.*

*Far.* That was a revolution indeed, but not in favour of the unalienable rights of nature.

*Jus.* Unalienable rights of nature! What do you mean by the unalienable rights of nature?

*Far.* I mean that right which all mankind inherit of rectifying abuses in their government, or changing it when it becomes too corrupt to be endured.

*Jus.* So, then, at last you throw off the mask. You are, I find, one of Oliver's levellers, such as he employed as pioneers, a tool of ambition, a footstool of some popular leader; a spreader of the poison contained in Sir William Jones's trifling enthusiastic rhapsody\*; one of those who fancy there is "no public spirit but in the garrets of Grub Street; no reformation but from the purlieus of St. Giles's; nor no Solon or Lycurgus, but who is to emerge from the tin mines of Cornwall, or the coal pits of Newcastle†."

\* For all these elegant names, see Dialogue between a Freeholder, &c.

† Disquisitions on several Subjects, p. 131.

*Far.* God

*Far.* God bless your worship, I hope I do not deserve all these hard names? I am but a poor simple fellow, and if your worship is offended, I have done.

*Jus.* No, no; you may go on, farmer: I am not angry with you, though "I frankly declare, " that I am almost ashamed of the trouble I have " taken in confuting such a motley heap of ab- " surdities \*."

*Far.* I am the more obliged to your worship for the pains you have taken; but your worship's understanding is so superiour to mine!

*Jus.* Yes, yes; a farmer does not stand upon a par with a justice, any more than the Dean of St. Asaph with the Dean of Gloucester; as he properly observes himself †. Come, farmer, let me examine you: do you imagine that all men are born equal?

*Far.* Certainly not; if by equality you mean size, or strength, or comeliness, or ingenuity.

*Jus.* Are all men born free?

*Far.* I do not exactly understand the question; if by free you mean the actual enjoyment of freedom, I see many that are slaves from the hour of their birth.

*Jus.* Do you believe that all government is derived from the people?

\* Dialogue between a Freeholder, &c. p. 24.

† Ibid. p. 1.

*Far.* It

*Far.* It is impossible for me to answer that question, unless I knew the history of it, in every country, from the beginning.

*Jus.* Is all government a compact between the governors and the governed?

*Far.* I suppose not, because I think men would hardly be fools enough to make so bad a bargain for themselves. I never in my life agreed that a majority, chosen by six thousand electors, should take my property away, year after year, just as they pleased.

*Jus.* Upon the whole, farmer, you answer better than I expected. Listen now to me, and I will lay open to you the most profound mysteries of this subject: there was, towards the end of the last century, a certain man called John Locke.

*Far.* Yes, your worship.

*Jus.* This man wrote a book to prove, that every man had an equal right to eat, drink, sleep, and follow his nose; and as it was a very particular time when he wrote, his work was much admired; and every man began to believe that he really had a right to eat, and drink, and breathe, without asking the leave of any of his neighbours.

*Far.* What particular time was it?

*Jus.* It happened to be just as some honourable Lords had discovered, that one King had abdicated, and another had taken his place.

*Far.* I understand your worship; just as the

conjurer, at our fair, conjures a pigeon from under a hat, and a stone into its place.

*Jus.* Farmer !

*Far.* Nay, your worship, it was only by way of comparison.

*Jus.* But, some little time ago, it was discovered that such a doctrine might have pernicious consequences ; more especially as the Americans began to doubt whether representation could be conveyed like an electrical shock, three thousand miles off ; and whether the proprietor of Old Sarum really represents three millions of people who have never heard his name.

*Far.* The doubt, to be sure, was extremely absurd.

*Jus.* So all our great men told them ; and a reverend divine, in particular, took it so much to heart, that instead of preaching and praying, and studying the Bible, he wrote a book about government, in which he totally confuted every thing that John Locke had said.

*Far.* What, every thing ?

*Jus.* Every thing : So he assures us, himself, in almost every page of his book.

*Far.* What, then, is this gentleman's opinion upon the subject ?

*Jus.* Suppose, said he, you put an hundred brace of men and women naked upon an uninhabited island, they will not only quarrel and fight, and get children, and invent machines to abridge labour,



labour, but some man will be stronger or more cunning than the rest, a better cook, or a nimbler weaver ; whence it follows, as an incontestable principle, that natural equality is nonsense, and that monarchy and episcopacy are of divine institution.

*Far.* I don't perfectly understand the force of that argument.

*Jus.* You are a little dull, farmer. Do you not grant, " that these human animals would soon discover a vast superiority and inferiority of talents among themselves ? " " This man would excel either in turning the ground in search after roots, or in climbing trees for fruit ; another in swimming and diving for fish, or in the pursuit of game ; a third in the taming certain birds and beasts for domestic use, or in the planting of such vegetables as were found to be good for food, and so quick of growth, as soon to come to maturity ; while a fourth, perhaps, would display a dexterity and genius in the preparation of several kinds of victuals, and in the first rudiments of the art of cookery."

*Far.* What then ?

*Jus.* " In all these cases it is obvious to conceive, that the less ingenious or adventurous, the less provident and frugal would naturally become, without any formal contract, dependent on, and

“ subservient to, their instructors and benefactors,  
“ in one degree or other \*.”

*Far.* Ha! ha! ha!

*Jus.* What do you find to laugh at in all this?

*Far.* I like this gentleman’s scheme extremely. Does not your worship see that by all this, you gentlemen are bound to serve and obey us farmers? For is there one of you that can turn the ground, or search after roots, or climb trees for food? Don’t we do all this for you; and without us, would not all your ins and outs, your squires and your deans, be starved in a week?

*Jus.* I must confess your inference is not altogether absurd.

*Far.* Suppose your worship were to be one of these hundred brace; set down naked as ever you were born; I think you would not very well know how to turn the ground, or dive, or plant vegetables.

*Jus.* To be sure I should not; I have been educated to higher objects.

*Far.* Well, then, suppose I were another of these gentlemen. Your worship is very hungry, but does not know how to get a mouthful; I, on the contrary, roam about the woods, climb the trees, dig the earth, and return loaded with

\* A Treatise on Civil Government. By the Dean of Gloucester, p. 129, 130.

wholesome vegetables. Now I want to know what you would say to me, to be admitted to my mess?

*Jus.* Why, surely, you would not be so inhuman as to refuse?

*Far.* That's another thing. The gentleman says nothing about that. But let us suppose we are only in the way of bargain: now, Mr. Justice, I say, you want part of my roots and fruits, what will you give me in return?

*Jus.* But I have nothing to give.

*Far.* Why, then, do you think I should be fool enough to work for you? that would be to become your servant; whereas, your friend says, you are to become mine.

*Jus.* Well, suppose, for an instant, I were to make you that offer?

*Far.* Thank you for nothing, I should answer; you can do nothing for yourself, therefore, you can do nothing for me. I am not fool enough to be at the labour of maintaining such a servant.

*Jus.* But suppose I learn the art of diving for cray fish, or of taming wild geese.

*Far.* Then something may be done. You want my roots, I want your fish; give me so much of yours, you shall have so much of mine; a fair exchange is no robbery.

*Jus.* Certainly not.

*Far.* Well, but that exchange is a mutual agreement, is it not? a compact, for I have learned  
the

the word? If that is the case, I don't see that John Locke thought so much amiss.

*Jus.* To be sure, my friend seems not to have made the matter as clear as he might have done.

*Far.* But let us make another supposition; that there was some other gentleman who possessed the first rudiments of the art of cookery; though I don't well understand how he is to exercise it without spits, gridirons, saucepans, coppers, larding pins, frying pans, fish kettles. ....

*Jus.* Stop, stop, farmer, where are you running to?

*Far.* I was only reckoning up a few of the things that I had seen in my landlord's kitchen; but, however, supposing this gentleman could boil and roast without spit, saucepan, or chimney, all your worship's crayfish and geese, does this give him a right to govern you?

*Jus.* I can't immediately say it does; but this worthy divine supposes, that this extraordinary ingenuity would naturally induce many of his neighbours to pay him the greatest respect, and that respect would naturally lead to government.

*Far.* What do ye properly mean by government?

*Jus.* A government signifies a certain set of men, that whenever they please may hang up all their neighbours, burn their houses, eat their  
 victuals.



victuals without paying, and kick their breech to warm themselves in cold weather.

*Far.* And would any set of men be such fools as to submit to all this, in order to have their victuals cooked? Did your worship ever allow my Lord's French cook to salute your posteriors, for a green goose or a dish of crayfish soup?

*Jus.* The case is very different at present.

*Far.* Are people less fond of good eating now than in the beginning? But I cannot, yet, conceive how this has any thing to do with John Locke. If half a dozen people should chuse to be kicked every day of their lives in order to have their dinner cooked, what is this to the purpose? They must give their consent, I apprehend, or else one man would never be able to kick them, though he were as tall as the Irish giant.

*Jus.* No; but perhaps he would kick them so lightly in the beginning, that they should hardly feel it; and at last, the custom would be so firmly established, that nobody would think of making any resistance.

*Far.* If they do not, well and good; but should somebody come, in the end, who is particularly tender in that part, and therefore will not submit to the operation?

*Jus.* Then he will be compelled to it.

*Far.* Compelled to it, by whom? Other people,

ple, he would say, master cook, have let you make very free with them, because they could not eat goose without sage; but the case is different with me, and therefore please to keep off.

*Jus.* Then he would call upon all those to help him that were used to have their victuals cooked at his shop.

*Far.* And what could that prove? Did I ever deny that any single person might be overpowered by force? Does John Locke deny that?

*Jus.* He was not quite so great a fool. He must have seen that in almost every country, force alone prevailed, and that the name of right was almost entirely unknown.

*Far.* Then, I suppose he never meant to describe what actually takes place, but only what ought to be the foundation of government, in order to render it just.

*Jus.* That I really believe to be the case.

*Far.* What, then, is it to the purpose, to describe how a government may possibly be formed, when, after all, we shall have to examine whether it be just or not? Though I do not find that we are much advanced towards any establishment, with all this cookery and weaving. But either it must be asserted, that every government is just, merely because it is a government, or else we are as much in the dark as ever, though the origin of an hundred governments should be explained.

*Jus.* But

*Jus.* But this gentleman supposes that men will naturally fall into government.

*Far.* Whether they will or not, seems to me to be as much to the purpose, as if I were to ask a West-India planter, whether he could justly enslave so many of his fellow creatures; and he should answer me by describing the place from which the slaves were brought, the ship in which they were transported, the size of the whips and chains which his overseer made use of; and at last finish his harangue, by telling me that fear was so natural a passion, that all his slaves would rather hoe sugar canes than be flogged.

*Jus.* But fear is not the only passion which this gentleman admits into his system.

*Far.* It is of very little consequence whether he does or not; for after all, the question will eternally recur whether the government is founded upon consent or not; as far as this gentleman has explained the motives which may lead men to consent to form, or carry on governments, he may have commented, but certainly has not confuted his antagonist; and as to a government founded upon fear, I must hear other arguments before I shall perceive its justice.

*Jus.* Since you are so difficult to be convinced, I must read you a fine passage which, I believe, will for ever silence all your doubts upon that subject. "Every man, by the constitution of

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"human

“human nature, comes into the world under  
 “such a degree of authority and restraint, as is  
 “necessary for the preservation and happiness of  
 “his species and himself; this is no more left  
 “to his choice, than whether he will come into  
 “the world or not; and this obligation he carries  
 “about with him so long as he continues in it.  
 “Hence he is bound to submit to the laws and  
 “constitution of every country in which he re-  
 “sides, and is justly punishable for disobedience  
 “to them \*.”

*Far.* This is so very deep, that I fear I shall hardly understand it without your worship’s assistance. In the first place the gentleman affirms, if I understand him, that a man can no more chuse whether he will submit to a certain degree of authority and restraint than whether he will be born or not; is not this called physical necessity?

*Jus.* Our birth certainly is.

*Far.* So, then, is the authority, if it is no more, left to our choice than our birth; but then he goes on and says, “this obligation he carries about with him as long as he continues in it.” Pray what obligation does he mean? Is physical necessity an obligation?

*Jus.* No; obligation can only be used in respect to things which depend upon our choice; a man

\* Disquisitions on several Subjects, p. 138.



is said to be under an obligation to act in a particular manner when conscience or duty obliges him ; but he is not said to be under an obligation to be born or to be hanged. But this gentleman is a great philosopher ; perhaps he means by obligation, the necessity he has been talking of.

*Far.* But he goes on and says, " Hence he is " bound to submit," &c. this cannot mean physical necessity. A man is not bound to submit to the gout or stone, or any thing which is unavoidable ; so that the gentleman seems to me to contradict himself, by first saying that it is out of our power to chuse at all, and then giving this very necessity for a reason why we should chuse a particular kind of conduct which is in our power.

*Jus.* Probably he means to say that restraint and authority are necessary for the happiness of the species ; and therefore a man is under an obligation to submit to them.

*Far.* Your worship has made it a deal clearer than it was before ; but even now, I don't perfectly comprehend the force of the argument ; for is there just that degree of restraint and authority which is necessary for the preservation and happiness of the species ? Neither more nor less ?

*Jus.* You may depend upon it there is the exact quantity.

*Far.* When the Jews, therefore, put our Saviour to death, when the Roman Emperors, as I

have heard, burned the Christians instead of torches; when a French King destroyed about eighty thousand of his Protestant subjects in one day; all these acts of authority were necessary to the preservation and happiness of the species?

*Jus.* There is a little difficulty in this, I must confess; these acts of authority were carried a little too far.

*Far.* What do I gain, then, by knowing that a certain degree of restraint and authority is necessary, when a certain degree is also destructive? Do I not submit to that authority for the sake of the human species and myself, or is there any other reason?

*Jus.* Intirely from that cause. "Dominion  
"is not allotted to the few for their own, but  
"for the benefit of the many over whom they  
"rule \*."

*Far.* Then I must submit for the benefit of the many, not of the few?

*Jus.* Certainly.

*Far.* Then if it should not be for the benefit of the many, I must submit no longer.

*Jus.* But I believe I was wrong to talk of submitting, as if people were to be asked whether they would submit or not; for "compact is repugnant to the very nature of government,  
"whose essence is compulsion, and which originates always from necessity, and never from

\* Disquisitions on several Subjects, p. 149.

“choice or compact\* ;” and again, “every governor is in the situation of a jailer, whose very office arises from the criminality of those over whom he presides †.”

*Far.* This is, indeed, a new view of things! —but pray, your worship, is not this a beautiful country that I see out of your windows?

*Jus.* The country is very well; but what is all this to the purpose?

*Far.* Can any thing be more agreeable than yonder cultivated plains, shaded with the richest crops of corn, and surrounded with lofty hills, upon which I can discern an hundred flocks of sheep securely feeding?

*Jus.* Surely, farmer, you are mad! We were talking about governments, not about hills and plains, and corn, and flocks of sheep.

*Far.* I beg your worship's pardon; but I was only reflecting, that for a prison, this little island here is one of the most convenient in the world; but it seems we are all felons, and His Majesty and Ministers are the jailers. Pray what crime has your worship committed, is it theft, or burglary, or treason? for I have seen all these names in your justice books.

*Jus.* You are not to take this literally: it is only an ingenious allegory, intended to explain the nature of Government.

\* Disquisitions, page 135.

† Ibid, p. 147.

*Far.* I do

*Far.* I do not much like it though — Our Parson is always preaching about the duty which we owe to Government, and the respect and reverence which belong to the higher powers; but I cannot conceive, that people owe any duty to jailers, or are obliged to stay in prison longer than till they can escape.

*Jus.* Hear me, Farmer, “ It is owing to their  
“ vices that there is any such thing as govern-  
“ ment, or any occasion for it; and consequently,  
“ all its attendant evils must be derived from the  
“ same source. It is their crimes which require  
“ punishment, and their venality which makes  
“ corruption necessary; war, with all its horrors,  
“ springs from their depravity, the violence of  
“ faction, the avarice of commerce, the ambition  
“ of the rich, and the profligacy and idleness of  
“ the poor\*.”

*Far.* God bless the gentleman from the foul fiend, as I have read in the play! What a picture has he been drawing! So then, I must understand that the more any nation is governed, the more wicked it is; and that all the evils which mankind suffer, are exactly in proportion to their depravity.

*Jus.* Something like this you may indeed infer.

*Far.* I should not indeed always infer that the horse is more wicked than his driver, or the lamb

\* Disquisitions on several Subjects, p. 147.



than the fox or wolf. So, then, the more evils we find in any Government, the more depraved we may conjecture the subjects to be?

*Jus.* Something like it indeed.

*Far.* When we consider, therefore, our West-India Islands, and see a parcel of wretches degraded below the rank of brutes, and chastised in the most cruel or ignominious manner for every trifle, we are not to suppose those who sold or those who bought them, are guilty of any fault; but only that these individual Negroes are more depraved than common?

*Jus.* Sure your consequences can never be just — Such a great man as my friend could never write such an absurdity.

*Far.* If I am wrong your worship will please to correct me — But you said, “It is owing to their vices, that there is any such thing as government; and consequently, all its attendant evils must be derived from the same source.” — When two kings, also, make war, about a white elephant, as I have heard sometimes is the case, and destroy some millions of each other’s subjects, we are not to say that these gentlemen were either cruel or ambitious, but only that their subjects were more depraved than ordinary?

*Jus.* Hum!

*Far.* I have read in a book, that when the Spaniards first discovered America, they destroyed,  
by

by various methods, some millions of the inhabitants, while they were establishing that government which has subsisted ever since: must I conclude, Sir, that the murdering Spaniards were innocent, inoffensive beings, but the murdered Americans more criminal than other men?

*Jus.* As to this question, I can more easily answer it. The worthy Christian divine I have before quoted, observes, "That these Americans  
"are in general, a loose-jointed and weakly race  
"of men, frequently afflicted with various kinds  
"of diseases, and the least capable of undergoing  
"any degree of hard and constant labour of any  
"human creatures upon earth\*;" and moreover, that "their beardless faces, and smooth skins, betray evident symptoms of a cold habit, and a lax  
"frame." "But the worst part of their character  
"is yet to come, namely,

"First—Their want of tenderness, sympathy,  
"and affection.

"Secondly — Their astonishing laziness and im-  
"providence.

"And thirdly — Their gloominess, fullness  
"and taciturnity†."

And,

\* Treatise concerning Government, p. 182.

† Ibid, p. 189.

It may not be disagreeable to the humane reader to see a different description of these very Indians in a modern traveller.

"I spent my time in admiring the beauty of this country,  
"and

And therefore, continues this worthy divine,  
in order to give them the signal advantages and  
blessings.

“ and I saw, for the first time, some of these men, whom we call  
“ savages. Their manners persuaded me that they had nothing  
“ savage but the name, and that we had given it to them only  
“ on account of their simple manners, and their comparatively  
“ harder manner of life — I particularly admired that coolness  
“ and serenity which they always preserve, as not feeling that  
“ lively and unquiet interest which we take in our own good and  
“ bad success — The attraction which fine forms have for us,  
“ made me examine with attention those of the two sexes ; whose  
“ muscles are well formed, without fat, and of a reddish chest-  
“ nut colour, fixed my attention.” *Voyages autour du Monde,*  
*par M. De Pages, tom. 1, p. 28.*

“ These savages are accustomed to go and weep over the tombs  
“ of their near relations; one of them had just lost his wife,  
“ and was letting his beard grow, as a mark of sensibility.”  
*Ibid. p. 34.*

“ They are tall and well made, having large and strong fea-  
“ tures, but without any thing disagreeable—they seem to have  
“ much respect for the old; they marry very early, and appear  
“ to love their wives whom they may repudiate, which, however,  
“ seldom happens.” *Ibid. p. 37.*

“ I will here relate an instance of the generosity of savages—  
“ A poor man, who had neither victuals nor horse, accosted us,  
“ and implored the assistance of our little caravan, to maintain  
“ and convey him to San Antonio, whither he wanted to go —  
“ He was unanimously rejected, and I alone could not render  
“ him this service; but how great should be our shame, when  
“ we heard that the neighbouring savages had furnished him  
“ with a horse and victuals.” *Ibid. p. 65.*

“ Other savages joined us upon the road, displaying the swiftness  
“ of their horses, and their address in managing them: I am

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“ obliged

“ blessings of civil government, you must either  
 “ change and alter the whole frame of their Confi-  
 “ tutions, in order to render them fitter for receiving  
 “ a good and liberal plan of government : or, fe-  
 “ condly, you must oblige them to submit to those  
 “ terms which you shall prescribe by the mere  
 “ dint of absolute power\*.”

*Far.* Does this worthy divine, then, think it just to murder and enslave all the loose-jointed, weakly, beardless, smooth-skinned people that can be found ?

*Jus.* Not so neither—But it must be allowed to be a very great excuse for the Spaniards in what they did ; and this seems to be the opinion of that celebrated historian Dr. Robertson.

“ obliged to own that I have never seen any thing more noble  
 “ and manly than these people.” Ibid. p. 70.

“ The second quarter is composed of Indians. As much as  
 “ the first (the Spaniards) are proud and lazy, the second are  
 “ laborious and affable — They alone cultivate the gardens and  
 “ fields.” Ibid. p. 100.

“ Here I left my faithful Indian of San Antonio — I can-  
 “ not enough admire the patient zeal with which he served  
 “ me. The prudence, the good sense, the religion and huma-  
 “ nity, which appeared in all his actions, force me to acknow-  
 “ ledge, that this Indian is the only man in these countries, in  
 “ whom I have found united so many qualities, which have  
 “ never been belied once in a four-months intercourse.” Ibid.  
 “ p. 104.

\* Treatise concerning Civil Government, p. 199.

*Far.*



*Far.* I am very little acquainted with historians; but I should have thought, that any learned man might employ his pen better than in apologizing for cruelty and injustice; whether they were committed upon men that had beards or none.—But, with your leave, I have some general objections to make to all you have been saying.

*Jus.* Speak them, then, freely.

*Far.* You seem in what you have last said, to suppose that all government is founded upon compulsion, and that all the evils attending it are only derived from what you are pleased to call the depravity of the governed.

*Jus.* Something like this may, indeed, be deduced.

*Far.* This appears to me to be the most impious apology for every species of injustice, cruelty, and oppression, that ever I have heard. Are not those who govern and are invested with these compulsive powers, men as well as their subjects?

*Jus.* Certainly they are.

*Far.* Must they not then be supposed to have every human passion, vice, and frailty, in common with all the rest of their fellow creatures? or is unlimited power found to lift its possessors to a more than human purity?

*Jus.* Quite the contrary—Experience proves, that most arbitrary Princes are corrupted from their infancy, by continual flattery, and a bad education; that they scarcely ever are taught the ele-

ments of the most common knowledge, that they chiefly spend their time with dancing women, fidlers, mutes, eunuchs, and puppet-shew men ; in looking over their jewels, seeing their elephants led to water, cock-fighting, bear-bating, partridge-shooting, and even in some countries, for want of better employment, in smoking tobacco or whittling sticks.

*Far.* If this is the case, I cannot conceive that it is necessary to persuade all these worthy gentlemen that the evils attending their governments, that is, the miseries which their subjects suffer, are generally owing to their depravity. It appears to me, that according to common experience, those who have the power to oppress, very seldom want the will ; but according to your system, every thing must be reversed ; should a Prince send twenty thousand ruffians into a cultivated province, with orders to destroy every thing before them, and either murder the inhabitants, or sell them for slaves, or transport them, under the name of a colony, into a desert where they will all be starved, we are not to say that the Prince was a monster, but only that the subjects were depraved ?

*Jus.* You analyze things rather too much, Farmer.

*Far.* Is not the gentleman that writes all this a great philosopher ? But why should not this be extended to every species of private, as well as public evil and violence ? According to your principle, the greatest bullies,

bullies, fighters, cut-throats, highwaymen, and footpads, should be deemed innocent people, that are now and then provoked, by the depravity of their neighbours, to carry things a little too far.

*Jus.* But you do not surely object to the idea, that all government is founded upon compulsion?

*Far.* Do then the subjects of all governments in the world, wish to destroy the governments under which they live?

*Jus.* I cannot say that, for we frequently see instances of the greatest public enthusiasm in favour of every species of government that is executed with tolerable mildness. Thousands, and even millions of mankind, are ready in almost every European country, to take up arms and venture their all, in defence of those governments, under which they were born.

*Far.* Have you not said too, that government was both natural and advantageous to all mankind?

*Jus.* I have. "Man is evidently made for society, and society cannot subsist without government, and, therefore, government is as much a part of human nature, as a hand, a heart, a head\*."

*Far.* I don't exactly understand why men must be always compelled to do what is natural and advantageous to them.

\* Disquisitions on several Subjects, p. 139.



*Jus.* No, but if any individual wishes to violate the laws, he is compelled to obey them.

*Far.* What is all that to the purpose? when men enter into a club, they are compelled to observe the general regulations of the society, yet clubs are not founded upon compulsion.

*Jus.* Farmer, beware of clubs.

*Far.* I am much obliged to your worship for the hint; they are sometimes a great loss both of time and money, and should not be too much frequented.

*Jus.* What, Farmer, are you simple enough to take me literally? Don't you know, a gentleman has lately been prosecuted for giving away a paper that compared a free state to a great club?

*Far.* And where is the harm of that?

*Jus.* The harm of that! Can you ask?

*Far.* It appears to me that there is a very great resemblance between them. A club is founded by a set of men that are naturally equal, that wish to live together upon good terms, that contribute jointly to their common expence, that make laws by common consent to bind their own members.— Does not a free state do the same?

*Jus.* Farmer, Farmer, “ It is high time that a  
“ stop should be put to these pernicious principles;  
“ and, therefore, that honourable gentleman, who  
“ carried on this spirited prosecution in spite of all  
“ opposition, and at his own expence, deserves the  
“ thanks



" thanks and applause of every lover of his country, and friend to true liberty\*."

*Far.* To be sure he must be a great friend to liberty that would have a man fined and imprisoned for giving his sentiments upon what constitutes a free state. But upon what is a free state founded, if not upon the free choice of its members?

*Jus.* Upon what? Necessity and compulsion to be sure.

*Far.* Your worship is surely joking. How can any man be free that is compelled? This is a contradiction in terms, and all states in the world would then be equally free.

*Jus.* But the subjects are only compelled to do what is proper for them, and for their own good.

*Far.* Who judges of that good; themselves?

*Jus.* No certainly—how should they judge, who are to have no will of their own. Their governors first decide what is good for them, and then compel them to practise it.

*Far.* And supposing the subjects have different ideas about their own good, are they still compelled?

*Jus.* Certainly, otherwise there would be no government.

*Far.* Should your worship then be compelled to act contrary to your own will and reason, would you call that freedom?

\* Dialogue between a Freeholder and the Dean of Gloucester, p. 23.

*Jus.* No, certainly.

*Far.* How then can it be true of a State? Is the freedom of a State something distinct from the freedom of each of its members?

*Jus.* To be sure, there is some little difficulty in reconciling the ideas of freedom and necessity: but a free State is founded upon nature, that induces men to associate.

*Far.* I thought we had discussed that already. Do you mean by nature, that nature which inclines men to consent to government, or something else?

*Jus.* That nature to be sure: it could not incline men to government, unless it inclined them to consent to it.

*Far.* Then you allow that a free State is founded upon that consent which nature inclines men to give to particular forms of government?

*Jus.* No: Zounds, but I don't — That would be giving up the whole affair at once. — Stay, let me "see — implicit consent, tacit agreement, implied "covenant, virtual representation, quasi-contract\*." — Aye! now I have it. Farmer, I do, indeed, allow there is a kind of quasi-contract in the case.

*Far.* What does your worship mean by a quasi-contract?

*Jus.* It is a term originally taken from the civil law, and means an obligation that may bind a man

\* Treatise on Civil Government, p. 139.

without his exprefs consent. Thus, for instance ; should I stop a pair of your oxen that were lost, and take care of them for you, you would be obliged in honour to pay me for the expences they had occasioned.

*Far.* All that may be true ; but what has this to do with the foundation of a free State ?

*Jus.* “ Men are necessarily and unavoidably the  
“ members of that State under which they live,  
“ and are as much bound to perform the duties of  
“ good subjects, and of good citizens, as if they  
“ had entered into the strictest personal agreement  
“ for the State doth not condescend to ask eve-  
“ man’s leave or previous consent, whether he  
“ shall, or shall not, be a subject, and be obe-  
“ dient to the laws of his country \*.”

*Far.* Now, indeed, I understand you better — For while you were deriving every thing from necessity and compulsion, it seemed as superfluous to talk about duty and obligation, as while you confine a man in prison, to instruct him which road he should take to Dover or Norwich. You then allow that some acts constitute a good, and others a bad citizen ; and that you are not talking of those acts which arise from external compulsion, but only of those which are voluntarily performed by a moral agent ?

*Jus.* I agree to it.

\* Dialogue between a Freeholder, &c. p. 3.



*Far.* You also allow that every man has a natural right to judge for himself?

*Jus.* There is some difficulty in that. What, is every man, however absurd, ignorant, brutish, profligate, to judge for himself?

*Far.* Either every man must possess a right of judging for himself, or else somebody else must be impowered by nature to judge for him. Will your worship please to point out that common standard?

*Jus.* This requires some consideration. Is not the government impowered by nature to judge for every individual?

*Far.* And how are individuals to know that the government is so impowered?

*Jus.* By considering their wisdom, dignity, power, experience.

*Far.* But to consider all this, and to determine in consequence of it, is an act of judgement; and therefore, with your worship's leave, we will allow that every individual has a right to judge for himself; for, without this right, he could not be a moral agent, or accountable to any tribunal, either human or divine.

*Jus.* I believe I must allow this; though, I fear, you will make a bad use of my concession.

*Far.* If then he inherits this right from nature, he will necessarily make use of it, when he is told of obligations which are to influence him, and duties which he is to perform.

*Jus.*



*Jus.* I cannot deny this.

*Far.* If then he judges that the favours he has received from the State are of such a nature as should induce him to continue its subject, he will naturally and voluntarily do it. But, supposing he should form a contrary judgement, why should he not leave that State, and either transport himself to the deserts of America, to try a state of nature, or connect himself with some new association of men?

*Jus.* That would be the height of ingratitude and baseness; besides, it is against the laws.

*Far.* Laws! pray who made them?

*Jus.* In most countries they are made by one man; in others by half a dozen; and the number scarcely ever exceeds twenty.

*Far.* But if they are made without his own consent, they must either bind him by physical necessity, which we have already examined, or can have no force distinct from that of duty and obligation.

*Jus.* That I allow.

*Far.* If then he thinks the obligation such as ought to determine him to remain a member, he will willingly remain, even though he should have a power of departing; and this, I apprehend, is one method of consenting to the government.

*Jus.* There is something in this.

*Far.* But this power of judging he can no more give up, than he can his common nature: those who pretend to do it, are fools or hypocrites;

nor has there ever been a single instance of its being done.

*Jus.* What, do not the Roman Catholics give up their own private judgement to that of the church, which they allow to be infallible?

*Far.* They do not know how to reason, that is all. For they must either pronounce themselves infallible in forming judgements about others; or else they must allow that fallible beings may as well be deceived in the judgement they make of another's infallibility, as in any other opinion: in the first case, it would be vain to reason with them; and in the second, they must allow, that they never can proceed beyond the force of their own private judgement.

*Jus.* Well, supposing I grant this?

*Far.* What is, therefore, a just government to every individual, must be founded upon his own consent, either privately, or publicly given; if he thinks it just, he will consent to it; if he thinks it unjust, he cannot really consent; in this sense, justice and consent are synonymous terms.

*Jus.* But may not a man believe a government to be just, and yet refuse to do his duty towards it?

*Far.* In that case, he acts against his own conviction; which he may equally do, though he should voluntarily and formally consent. But we are considering the connection there is between justice and consent. If this be true in respect to an indi-

individual, must it not, with greater force, be true of the whole people ?

*Jus.* What ?

*Far.* That in order to believe a government just, they must consent to it. That is, that unless they think it such a government as they would voluntarily choose, they can never think themselves bound to submit to it, or to continue it.

*Jus.* What, may not the people be mistaken ?

*Far.* Very grossly : they are but men ; but what other judgement can they make use of, but their own ?

*Jus.* What other ; they may be advised by their betters, by the government ?

*Far.* If they judge the opinion of any one else better than their own, they will quit that, and adopt the new one. If they do not, why should they accept the opinion of any one else in preference to their own ?

*Jus.* What, not of those who are wiser ?

*Far.* How are they to know they are wiser ? Is there any other method than by using their own judgement ?

*Jus.* I own I am a little puzzled—there must be some sophism in all this—What, are the beasts of the people to have this power of judging ?

*Far.* How do you know they are beasts ?

*Jus.* Many learned and ingenious men call them so.

*Far.*

*Far.* Very likely. But does one man's calling his neighbour a beast give him a right to judge for him? Much less for a whole multitude!

*Jus.* I cannot entirely settle that affair of judging. But have not the government in every country a right to direct the conduct of their subjects?

*Far.* Do you mean by the government, one, or half a dozen, or twenty; and by their subjects, some millions?

*Jus.* Yes.

*Far.* In order to direct their conduct, they must first determine what is proper to be done, and what the contrary.

*Jus.* Yes.

*Far.* And in order to do this, must they not exercise their judgement?

*Jus.* Certainly.

*Far.* Will your worship shew me how every man can have a right to judge for himself, and yet a few for millions?

*Jus.* But those few may determine something so just and useful, that when known, it shall appear reasonable to all, or the greater part.

*Far.* The greater part! of whom? of themselves, or the people?

*Jus.* Of the people.

*Far.* If they judge it just, and useful, and reasonable, they will consent to it, whether they thought it themselves, or heard it from others. Do we refuse to live in houses, or wear clothes, because



cause we did not think of them ourselves? Besides, without knowing it, your worship is continually affirming the same thing that I do.

*Jus.* How is that?

*Far.* You say there is a mutual obligation both upon subjects to obey, and upon the government to rule properly. Or do you mean any thing else when you talk of a *quasi-contract*?

*Jus.* Certainly not.

*Far.* But if one party does not perform his duty, I apprehend, the other can be under no obligation to him upon that account?

*Jus.* That I grant.

*Far.* Who then is to judge whether the government perform their duty or not;—the people?

*Jus.* I cannot allow that—the whole are to judge.

*Far.* The whole!—what, both government and people?

*Jus.* Yes.

*Far.* And if they should differ in their judgments, who is to decide between them?

*Jus.* Why, the government.

*Far.* That is an excellent method of deciding the matter. When your worship hires a bailiff or a steward, do you apply to him to know whether he discharges his duty, and looks after your affairs properly?

*Jus.* No;—I use my own eyes and judgement.

*Far.*

*Far.* Why, then, should not the people do the same? unless the people were made for a particular government, and not every particular government for the people.

*Jus.* There is no conclusion to be drawn from a comparison.

*Far.* But if the government are to judge of their own conduct, it should seem an insult upon common understanding to talk of obligation, since the vilest tyrant that ever lived will always assert that he governs well, and charge his own excesses upon the depravity of his subjects. If, on the contrary, you allow the people to judge, what is this but founding government upon consent?

*Jus.* Why I don't care if I do allow a kind of *tacit consent*, provided you go no farther.

*Far.* If this is true in general, it must also be true in particular: if it is true in one case, and at one time, it will equally hold good in every other case, and at every other time.

*Jus.* How do you mean?

*Far.* That if every man has a right from nature to judge for himself, and the whole for the whole; if the public good is the just end of all government, and the people have an immediate right from nature to consider the conduct of those who administer it; if, lastly, no man has a right to judge for the many without their consent; that all these things, propositions I think they are called, will always be true of every nation, and at every moment of its existence.

*Jus.*

*Jus.* Hum.

*Far.* If they are not true, your worship will please to shew the exception; or if you have made any unwary concessions, you know you may retract them.

*Jus.* Well; let us hear the rest of your inferences.

*Far.* There is such a thing as right and wrong in itself, justice and injustice, good and evil; upon the first of all these government should be founded.

*Jus.* I believe nobody will deny that.

*Far.* But as every human being is liable to error, and as opinions vary, it is impossible to decide who has really arrived at truth, therefore the particular systems of right and wrong which prevail in the world, are only the particular opinions of those who profess them.

*Jus.* Are there not some points upon which all are agreed?

*Far.* Where all are agreed, there will be no dispute; but where men differ, it is only the judgement of one set of men against that of another.

*Jus.* That seems true.

*Far.* When a government, therefore, is said to be founded upon reason and justice, it means no more than the opinion which certain men entertain upon these points.

*Jus.* That I may, perhaps, admit.

O

*Far.* If

*Far.* If all the society are agreed, that forms the justest species of government, we can conceive, a government founded upon universal consent; if a very large part, it will be less perfect, but still sufficiently so for common use; but if only a small part, those who immediately govern, should pronounce it good, while all the rest consider it as unjust, evil, and unreasonable; it is their opinion which ought to prevail, and not the sentiments of the few in opposition to those of the many.

*Jus.* Go on.

*Far.* But this is true of every nation and of every time. If the people are in the habit of judging for themselves, that will be the evident spirit and form of the government; if they are not, they will have a right to resume it whenever they please; and when once they have formed a judgement, that judgement ought to prevail against the opinion of the few. But as no man can pretend to a natural right of judging for another, much less can he pretend to a right of judging for a thousand or a million; if he does judge, and attempt to enforce his own inferences by compulsion, there is an end of all reason, and one species of violence may be opposed to another.

*Jus.* At least you do not affirm that governments are founded upon an actual compact?

*Far.* Certainly not. As far as I am acquainted with



with the world, I see much more of injustice and oppression in most governments than of public good. But an actual compact is an expression of something that is supposed to have an antecedent existence, is it not? It is an assertion of right on one side, and an acquiescence on the other; and these are frequently mutual.

*Jus.* Yes.

*Far.* The compact, then, is only the record of these rights which have an absolute and independent existence: this you admit when you talk of a *quasi-contract*.

*Jus.* I do.

*Far.* The rights, then, are of a higher nature, and of more authority than even the compact; and he that possesses the substance may always claim the shadow.

*Jus.* What do you mean?

*Far.* I mean, that, as in Magna Charta, our ancestors did not create certain rights which were before unknown, but only demanded an acknowledgement of them; so every people may justly claim the same acknowledgement of the rights of nature from those who govern; and you may call this a compact or what you please; the right will eternally subsist.

*Jus.* But is no government just, excepting where there is an actual compact?

*Far.* Your worship may answer that question for yourself.

*Jus.* How so?

*Far.* How many free governments are there in the world?

*Jus.* About three or four, if we except those barbarous nations which we are imperfectly acquainted with.

*Far.* And how many arbitrary ones are there?

*Jus.* All the rest of the world that we are acquainted with.

*Far.* Is there any knowledge or mention of actual compact in those last?

*Jus.* It would be certain death even to hint at such an idea. The whole nation is supposed to be the property of a single person.

*Far.* And is it the same in the three or four free countries?

*Jus.* By no means: there something of that kind still subsists, and is interwoven with the form of government, though it is wearing out every day. Indeed we can enumerate more nations than one, that have had these actual compacts subsisting within the memory of man, but dare no longer claim them.

*Far.* You have then answered your own question; for if these actual compacts are ever found by experience to accompany public liberty, and measure its extent, I should think that every wise and virtuous people would be as solicitous about their preservation as you gentlemen are about the title deeds of your estate; and where they were  
lost

lost or mislaid, would be never easy till they had either recovered them, or formed new ones. And after all, that State must ever be allowed to be the freest, and that government most just, *where this great, eternal, social compact is best understood, most universally allowed, and engrossed in the fairest characters.*

*Jus.* Well, farmer, I cannot, upon the whole, deny that there is some shew of reason in some of the positions you have advanced; I see that you have been "chewing the cud over and over again" on some bits and scraps collected out of the "writings of Oliver's levellers\*." But I cannot help advising you never to print such seditious libels as I have this day heard.

*Far.* Libels! your worship: libels! what is it a seditious libel in this free country to converse upon the principles of general liberty, and talk of the social compact and a government of consent? I thought the very government under which we live, had sprung from a Revolution, which could be justified upon no other principles?

*Jus.* Farmer, "To be ever talking of *revolutional principles*, whether with or without a cause, is a sure sign either of a very weak head, or of a very bad heart†."

*Far.* What, then are revolutionary principles false principles?

\* Dialogue between a Freeholder, &c. p. 25.

† Ibid. 28.

*Jus.* I do

*Jus.* I do not altogether say that.

*Far.* Why then should we not talk of them? Next to the principles of religion, is there any thing of more consequence to any man than the principles of his government, the principles of freedom, the natural, eternal, unalienable rights of the species. . . . .

*Jus.* Farmer, I must repeat to you, that you are now uttering poisonous and malignant libels, which I must caution you against publishing.

*Far.* There is very little danger of any thing I can say ever getting into print.—But as to the nature of it, I cannot conceive that it is either poisonous or malignant. God knows I work very hard, and have enough to do to pay my taxes already; so I have no desire to be prosecuted for libels; nevertheless, should a thing of that kind happen, I am as well prepared as another, and should have an honest jury of my neighbours, that will not suffer me to be oppressed.

*Jus.* Now, Farmer, you are giving a specimen of the greatest ignorance I have yet heard drop from your lips.—Do ye not know, that the jury have nothing to do with libels?

*Far.* Nothing to do with libels!—The law is altered then—for as it stood when I was last upon a jury, we, jurors, had a right to determine upon every crime that came before us.

*Jus.* The law is not altered; and you may decide upon every other crime but that of libel.



*Far.* Is there then some particular law, which says, juries shall not determine about libels?

*Jus.* None,—And even in respect to libels, you may determine whether the party accused was guilty of the fact of publishing; it is only the law, which must be left to wiser heads than your's.

*Far.* Pray what is this distinction of law and fact founded upon?

*Jus.* Upon the nature of things and the English constitution. For it is very plain, that though twelve men of decent understanding and unexceptionable character, may be well qualified to hear evidence in respect to matter of fact, and to decide upon it, they must be very unfit to give a judgment in respect to the abstruse doctrines of the law. And according to this is the sage opinion of Lord Coke, "For jurors are to try the fact, and the judges ought to judge according to the law that riseth upon the fact, for *ex facto jus oritur*\*."

*Far.* I would not wish to mistake your worship in a point of so much consequence: but you allow, that the jury is to try the fact.

*Jus.* Most undoubtedly.

*Far.* What fact is it they are to try; the fact contained in the indictment or some other?

*Jus.* In the indictment to be sure. No other crime can come before the court.

*Far.* And what is properly an indictment?

\* Coke's Institutes, part 1. sect. 336, edition of 1639.

*Jus.* "An indictment is nothing else but a plain, " brief, and certain narrative of an offence committed by any person, and of those necessary circumstances that concur to ascertain the fact and " its nature \*." And, in order to give it due accuracy, besides other circumstances of time and place, " there is required in an indictment a certainty, " touching the thing wherein or of which the offence is committed." " The fact itself must be " certainly set down," and " the offence itself " must be alledged, and the manner of it †."

*Far.* And this fact, thus set forth in the indictment, and constituting a particular offence either against the common or statute law, is what the jurors are to try.

*Jus.* They take an oath to that purpose, " That " they will well and duly try, and true deliverance " make, between our Sovereign Lord the King and " the prisoners at the bar, and true verdict give, " according to their evidence. ‡."

*Far.* If then I understand you properly, every indictment must contain an offence, and it is the evidence of that offence which properly falls under the cognizance of the jury.

*Jus.* You are right.

*Far.* But what is an offence? Is it not some action which is forbidden by the law, under the penalty of a particular punishment?

\* Hale's Pleas of the Crown, vol. 2. p. 169, edition of 1736.

† Ibid. 182, 183, 184.

‡ Ibid. 293.

*Jus.* Certainly.

*Far.* And is it not, then, supposed, that even the meanest understanding may comprehend what is the fact so prohibited? If it is made felony to alter the direction of a frank, must not every person in the nation be supposed capable of knowing what a frank is; if we may not shoot a partridge or convert barley into malt, must we not be able to distinguish a partridge from a crow, barley and malt from an hasty pudding?

*Jus.* To be sure.

*Far.* And is not this true of every thing that is forbidden by the laws; or of the two or three thousand penal statutes which I have heard prevail in this free country, is there one of them which may be violated with impunity under the pretence of ignorance?

*Jus.* Were it otherwise, there would be no such thing as punishment for crimes, for every one would pretend to be ignorant of the particular in which he had offended.

*Far.* Why, then, according to your account, every person in the nation is supposed capable of understanding not only the gross and capital distinctions of crimes, but all the minuter ones which affect the interests of the excise; such as the laws of making malt, the coppers in which tallow is to be boiled, the distinction between rush and mould candles, the art of roasting coffee, of making soap, of distilling spirits, the natural history

of hares, partridges, and pheasants, of the numberless species of dogs, at what o'clock it is legal to send half a dozen pounds of tea across the way, and when a crime against the state, in short. . . .

*Jus.* In short, Farmer, you must have done with your enumeration. But, in one word, "Ignorance of the municipal law of the kingdom, or of the penalty thereby inflicted upon offenders, doth not excuse any that is of the age of discretion and *compos mentis* from the penalty of the breach of it; because every person of the age of discretion and *compos mentis* is bound to know the law, and presumed so to do: *ignorantia eorum, quæ quis scire tenetur, non excusat* \*."

*Far.* At least you will allow that the law cannot justly punish a man for any thing which is not intelligible to a common understanding.

*Jus.* Nor is there any thing made a crime, and punishable by our laws, which is not sufficiently plain to the meanest understanding.

*Far.* I thought a libel had been an exception.

*Jus.* Nothing in the world more easy to comprehend — "A libel is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, to asperse the reputation of one that is alive, or the memory of one that is dead †." — And if this holds good of writings,

\* Hale's Pleas of the Crown. 1. 42.

† Hawkins



whose tendency is only to blacken the character of private individuals, much more must it be true of those abominable performances, which tend to "alienate and withdraw from our Sovereign Lord the King that cordial love, allegiance, and fidelity which every subject should and ought to have towards him:" and "by wicked, artful, scandalous, and malicious allusions, suppositions, and insinuations, to traduce, scandalize, and vilify the principal officers and ministers of state, and thereby to weaken and diminish the public credit, power, and authority of the Government;" or, "to move, excite, and stir up the subjects of our Lord the King, to insurrection and rebellion\*." Is there any thing in all this but what is perfectly intelligible? Or can any one blacken the reputation of his neighbour, or traduce the principal officers of State, and excite insurrection and rebellion, without being conscious that he is doing what is punishable by the laws?

*Far.* I should think not: more particularly, as any writing which was intended to act upon the multitude, and thereby to inflame their passions against the government, and to excite an insurrection and rebellion, must be sufficiently plain, or it never could produce the desired effect.

\* All these passages are taken from the information in the trial of J. Almon, 1770.

*Jus.* Here, farmer, you are right— And therefore it has been wisely observed, “ that a defamatory writing, expressing only one or two letters of a name, in such a manner, that from what goes before and follows after, it must needs be understood to signify such a particular person, *in the plain, obvious, and natural construction of the whole . . . . .* is as properly a libel, as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions: *and it is a ridiculous absurdity to say, that a writing which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury\*.*” — There, farmer, there is law for you — Can any one write a libel now, do you think, and pretend ignorance? — You see it must be intelligible even *to the meanest capacity.*

*Far.* I am infinitely obliged to your worship for all this information — But, from all you have said, I cannot help making one general conclusion.

*Jus.* What is that?

*Far.* That the commonly alledged distinction between law and fact is either a mistaken one, or else that there are many cases, in which even the meanest understandings must judge of both.

*Jus.* How so?

*Far.* You have laid it down as an universal

\* Haw. v. 194.

principle in all our penal laws, that every man who is arrived at the years of discretion, and is *compos mentis*, is bound to know the law, and is presumed so to do.

*Jus.* Yes.

*Far.* How can he do this without also judging of the law in some sort? Must he not, in the first place, understand what the particular fact is, which is forbidden? And in the second place, must he not judge that the particular fact which he thinks of is the fact forbidden by the law? Without this power of the understanding, would any man be able to obey the laws even for a single day? Or would it assist him much to be able to decide what a libel was, unless he could also comprehend that this was the libel forbidden by the law, and punishable at the discretion of the court with fine and imprisonment?

*Jus.* I cannot contradict what you say.

*Far.* Suppose a poacher is brought before your worship, wires found upon him, others in the hedge, and a brace of hares peeping out of his pocket, will it avail him to say, that he indeed understood what snaring a hare was, because that is matter of fact; but he did not know it was any crime, because that is matter of law? Did it avail me any thing in the case of Old Ball, for which your worship has fined me twenty pounds, to say I had never read the act; or will it now avail me any thing to say, I know what a blind mare is,  
but



but I cannot pretend to judge whether I am to enter her or not, because that is matter of law?

*Jus.* This is, indeed, true in most cases.

*Far.* You have said it was true in all, even in matter of libel. If you know any exceptions, please to state them; and at the same time explain, if you please, how a man can *be bound to know the law*, and obey it, if the law is not intelligible?

*Jus.* Well, well, go on; I shall not contest that point with you.

*Far.* But if it be necessary for every man thus to judge of fact and law for himself, is it, I wonder, more difficult to do it in the case of another man? And without this presumption, could a jury ever bring in a verdict at all? Must they not, in every case, return, as they sometimes used to do, *ignoramus*?

*Jus.* What does all this tend to?

*Far.* Your worship set out with saying, that the jurors must confine themselves to fact, and not meddle with the law; yet you have now allowed that every man throughout the kingdom must every day judge for himself both in fact and law, in some thousand instances: are the jurors, then, supposed to be more ignorant than the felons who come before them?

*Jus.* Certainly not.

*Far.* If, then, the prisoner at the bar is previously supposed to have understood the particular law



law which he is accused of violating, may not the jury understand, whether the facts alledged and proved against him amount to such a violation or not ?

*Jus.* In most cases this is true, but there may be exceptions.

*Far.* We will consider the exceptions hereafter. But I wish to ascertain what is my duty and my legal privileges as a juryman, lest I should decide unjustly about the estate, the liberties, or the life of my fellow creatures in this world, or hazard my salvation in another, by acting contrary to my oath.

*Jus.* Well, well, go on; for I begin to be tired of this conversation.

*Far.* The indictment your worship has declared to be "a plain, brief, and concise narrative of the offence," and this indictment the jury are sworn to try. What is it then they try ? not a bare, simple, indifferent fact, but a fact so complicated with law, and distinguished from all other facts, as to constitute a particular offence, and this offence they are to try ; the offence, to be sure, contains a fact, but it also contains the law blended with it. If, then, the jury are to try the offence contained in the indictment, they must not only consider the mere fact, which would be no offence at all without the law, but also so much of the law as, blended with the fact, is sufficient to constitute it the crime in question. Your worship has heard the  
old

old proverb, "Every mare is an horse, but every horse is not a mare."

*Jus.* What have your vulgar allusions to do here?

*Far.* A great deal. Every offence is a fact, but every fact is not an offence. If, therefore, the jury are to try the offence, they must necessarily find the fact; but it surely does not follow, that because they are to find the fact, therefore they have nothing to do with the offence. And what is it they ever pretend to find, except the specific fact set forth in the indictment; upon which they are to give a verdict according to the evidence, and true deliverance make, or else they are forsworn? If the indictment is for murder, the fact to be found is, whether the prisoner has committed murder or not, for that is the fact about which they are to hear evidence; not whether one man has run a knife into the body of another, for that might be by accident or in self-defence. And I have heard that the form of the indictment is so sacred, that the omission of any one particular which is necessary to constitute the crime, would render it insufficient; and that an act of parliament was necessary to give a power of leaving out three little words\*. To say, therefore, that every indictment must contain a *plain, brief, and concise narrative of an offence*, which offence is the

\* 37 H. 8, cap. 8, to omit the words *vi et armis* in indictments for murders.

fact to be found by the jury; that they take a solemn oath *well and duly to try this*, and true deliverance make between the King and the prisoner, according to their evidence; and then, that after all, they are to find some fact which is totally indifferent to the indictment, and, therefore, not the fact inquired after; what is this, your worship, but the strangest jargon that was ever invented to puzzle common sense?

*Jus.* How do you mean?

*Far.* In an indictment for stealing a horse, if the jury were to find, that the prisoner was seen mounted upon the horse in question; in one for burglary, that he was seen looking out of the window; in one for rape, that he was discovered in bed with the prosecutress; is it not evident that all these things might be facts, but would not be the facts the jury were to try, because they constitute no crime; and, therefore, are not the facts contained in the indictment? Or what would you say to a judge that should gravely tell the jury, they were to overlook every other circumstance, and only hear evidence and bring in a verdict about these unmeaning particulars?

*Jus.* But no judge ever yet gave such a charge.

*Far.* What think you of William Anderton, that in the year 1693, just five years after the blessed Revolution, was tried upon a statute of Edward III. I think, for compassing the death of the King? . . . . .

Q

*Jus.* I



*Jus.* I thought I should catch you at last — This is high treason, and must be proved by some overt act; what has this to do with libels?

*Far.* What, indeed! Yet the only evidence that he had compassed the death of the King, was, a printed libel; and the only proof that he had printed this libel, that it was found in his bureau; and that a printing press and other libels, corrected by him, were discovered in his lodgings. When this poor fellow, who was afterwards hanged for this most *clear and explicit treason*, said it was a matter of law to determine whether a printed paper could be deemed an overt act of compassing the death of the King, and therefore desired counsel might be assigned to him, the Court told him there was no room for it; printing *was manifestly an overt act*; and therefore there was no *matter of law* for counsel to plead: And the Lord Chief Justice Treby summed up the evidence to the jury, “telling them what dangerous consequence such “treasonable libels were of; and that it was as “great and malicious a treason as ever could be “imagined. This was done only to exasperate, and “to stir up sedition and rebellion amongst us; “therefore, if they did believe what the witnesses “for the King had sworn, *to be sufficient evidence “that he printed the libel*, then they must find him “guilty.”

*Jus.* I suppose Homespun has furnished you  
with



with all this silly stuff, out of the 8th volume of the State Trials\*.

*Far.* Silly stuff, do you call it? — To me it appears an authentic, but dreadful lesson, of what Englishmen must expect, as often as they suffer that great and constitutional bulwark of all their liberties, the privileges of juries, to be invaded: and therefore I most sincerely wish that this trial could be known from one end of the kingdom to the other, and read by every juror before he enters a court of justice. At present, I will beg leave to ask your worship, whether that jury was not forsworn, which, instead of trying and finding the fact contained in the indictment, high treason in compassing the death of the King, only tried and found a fact, the publication of a book, which in itself was innocent; and that, instead of giving a *true verdict according to their evidence*, gave an immaterial part of the evidence for a verdict, and instead of *true deliverance between the prisoner and the King*, delivered an innocent man up to the rage of enemies, determined, at all events, to destroy him?

*Jus.* What, may not the jury find a special verdict?

*Far.* Yes, certainly; if they can form no decisive opinion upon the case, they may bring in a special verdict, because they must give some verdict; and

\* Second edition, p. 64:

every verdict must be either general or special. But if they neglect the means of information before them, and instead of clearing an innocent man, when there is no sufficient evidence to convict him, deliver him over, either by their negligence or timidity, to his enemies, they forswear themselves, and are guilty of every mischief which they are the occasion of to the prisoner.

*Jus.* Well, well ; the power of giving a general verdict upon the indictment, is not, I believe, contested to the jury in any capital case. In the case of John Matthews, a lad of nineteen years old, who was hanged for printing a libel in the year 1719, upon a statute of the 6th of Anne, which makes it treason to assert that the Pretender hath any right to the crown of Great Britain, the judge thus concluded his charge to the jury : “ Gen-  
“ tlemen, you are upon this to consider whether  
“ the prisoner at the bar hath maliciously, ad-  
“ visedly, and directly declared, maintained, and  
“ affirmed, by printing, that the Pretender hath a  
“ right to the crown of Great Britain.

“ Upon the whole, if it shall appear to you,  
“ that the prisoner at the bar hath printed this  
“ libel, or caused it to be printed ; and that by  
“ this libel, he hath maliciously, advisedly, and  
“ directly maintained and affirmed, that the Pre-  
“ tender hath any right or title to the crown of  
these

“ these realms, then he is guilty of the indictment, “ otherwise you must acquit him\*.”

*Far.* I will make no observations upon the cruelty of hanging a lad of nineteen, who very probably did not understand a page of what he printed, although I think such barbarity could hardly be the intention of the legislature: but this appears to me a full acknowledgment of the jury’s right to consider the matter of a libel.

*Jus.* Here a particular assertion is made high treason; and therefore it is necessary to examine the body of the libel, to know whether that particular assertion is contained in it; since, though the libel had contained every other scandalous and seditious expression, if it did not contain the direct assertion of the pretender’s right to the crown of this kingdom, it would not have been treason upon that statute. The assertion is the crime; *the libel is only given in evidence.*

*Far.* And is not this the case with every libel?

*Jus.* How?

*Far.* Is not the pretended libel, that is, the publication, quoted as an evidence of some particular criminal intention? Or would a general indictment against a man for publishing a libel, without stating any thing farther, hold good?

*Jus.* To be sure an indictment that did not state some intention to defame the government, to vilify

\* State Trials, 9, 711.

public characters, to create animosities, to disturb the public peace, would not be effectual\*.

*Far.* A publication then is, in itself, no libel, and can no more constitute a crime, than holding a sword can constitute murder.

*Jus.* I grant that every man in this country has a general right to publish, as well as to act: indeed publishing is no more than one particular method of acting.

*Far.* But to defame the government, to create animosities, or to disturb the public peace, is a crime for which a man is justly punishable.

*Jus.* To be sure.

*Far.* And this intention, when clearly expressed or proved by writing or printing, is that which constitutes a libel and a public offence; for I am not now speaking of private defamation. Or do you give any other account of libels?

*Jus.* No.

*Far.* Why then the crime is to intend to defame the government, to create animosities, or to disturb the public peace. Must not this, or some such offence, be charged in an indictment for a libel?

*Jus.* I do not deny that some seditious intention is always charged in the indictment.

*Far.* Why then it is the seditious intention, the will to create animosities, the intention to disturb

\* In a criminal prosecution, the tendency which all libels have to create animosities, and to disturb the public peace, is the sole consideration of the law. Blackstone's Commentaries 4, 151.



the public peace, which is the crime; and this is certainly what the jury are to try, and about which they are to give a true verdict according to the evidence.

*Jus.* But particular passages are always quoted in the indictment.

*Far.* So is the making a wound of such a determinate size, and with a particular instrument, in an indictment for murder. But this is not the crime, it is only an evidence or circumstance; and therefore is not to rule the verdict.

*Jus.* But in the case of libel, it is the particular passage which constitutes the crime.

*Far.* What! are there certain forms of words which are forbidden by the law?

*Jus.* I do not say that, except in the case of that statute on which Matthews was hanged, and a few more. There is no precise form of words which can be defined to constitute a libel.

*Far.* There is then no precise form of words which is to direct the enquiry of a jury.

*Jus.* Were a million of forms to be forbidden, enow would remain to evade those positive laws, and exercise the malice of the libeller.

*Far.* If no particular form of words then constitute a libel, no particular form of words is the crime to be ascertained, or the object to be inquired after by the jury; since, when the law forbids nothing, at first sight nothing should be a crime.

*Jus.* How!

*Jus.* How! is it no crime to attempt to raise sedition, to create an evil opinion of His Majesty's government, to vilify great officers of state?

*Far.* I do not deny it.

*Jus.* Why, then do you say that words which do all this are no crime?

*Far.* I never said so.

*Jus.* What did you then say?

*Far.* I said that as no particular form of words was forbidden by the law, or could be the subject of an indictment, it never could be the ultimate object of a jury's inquiry, whether the person accused had really spoken or published any particular one.

*Jus.* I do not know that.

*Far.* If I am wrong, will your worship inform me what particular words in themselves constitute a libel, without the consideration of any other circumstance?

*Jus.* What! Would it not be a libel to affirm or print, that many of His Majesty's Ministers were knaves?

*Far.* Suppose the words were to stand so, might they not be followed by an explanatory passage which should transfer the guilt to some other person? Might I not add, "so say the disaffected and the seditious; but my opinion is, that they are patterns of every virtue, particularly disinterestedness;" would that be a libel? Is not the worst part of a libel always repeated in the indictment?

*Far.* Much

*Jus.* Much may be said on both sides ; however I will allow that no particular words can in themselves constitute a libel ; or at least they cannot be precisely ascertained beforehand.

*Far.* Why, then, it is not the particular form of words which constitutes the inquiry of the jury.

*Jus.* Yes it is ; because if they ascertain the words, the court will decide for them whether those words compose a libel or not.

*Far.* The jury are much obliged to the court for taking their business off their hands ; but have you not allowed that the jury are to inquire and hear evidence about the particular offence contained in the indictment ? Now in the case of a libel, it is not this or that particular form of words which constitutes the offence, but the intention to disturb the public peace.

*Jus.* Yes ; but the proof, and the only proof alledged is, some particular passage, or, perhaps, more than one, taken from the libel.

*Far.* Libel ! That is the point to be inquired into. The intention is only collected from the publication, I think, you allow ; if the publication has a natural tendency to disturb the public peace, it is a libel, because it supposes a criminal intention ; but if it has no such tendency, it is no libel, and consequently can prove no criminal intention.

*Jus.* That I do not deny.

R

*Far.* How

*Far.* How, then, can you assert, that it is not the duty of the jury to consider the only proof of the crime which comes before them? For either the crime consists in publishing something which has a seditious tendency, independent of all intention; or even though the tendency should be proved, it may be necessary to consider the intention of the writer; and in either case, the first thing to be considered is, whether the seditious tendency really exists in the publication?

*Jus.* May they not inquire whether the blanks are properly filled up, and the prisoner has really published the writing in question?

*Far.* Certainly; because, although the inuendos are ever so accurately made out, and the publication ever so well ascertained, the crime charged in the indictment is yet to be determined; if the inuendos are improperly stated, or the publication is not proved, there does not remain even the shadow of an evidence.

*Jus.* But, after all, do you not know that it is the business of the jury only to find the fact?

*Far.* Fact! what fact; the fact in the indictment?

*Jus.* To be sure.

*Far.* Is not that fact either the paper's having a seditious tendency, or the intention of the writer to create animosities and disturb the public peace?

*Jus.* That



*Jus.* That question involves much law learning, and therefore should be left to the judges.

*Far.* I thought you had told me that every penal law was intelligible to the meanest understanding, and that every man was bound to know the law at his own peril; and that the doctrine of libels was obvious to the dullest comprehension?

*Jus.* I did say something of this kind; but that chiefly related to private libels.

*Far.* But is the doctrine of public libels more difficult to be understood? If so, the maxim that you quoted must be false, of every one's being bound to understand the law: for how can a common man understand what requires all the learning and experience of a judge to decide? If that is settled to be the case, I declare, that as a juror, I would acquit every libeller that comes before me; for if it is impossible for a common man to know the law, he ought to be excused by involuntary ignorance, like madmen and infants.

*Jus.* The maxim of the law can never be false; and as libels are always intended to operate upon the multitude, to be sure they are generally not very difficult to be understood.

*Far.* Is it not a ridiculous absurdity to say, that a writing which is understood by every, the meanest capacity, cannot possibly be understood by a jury?

*Jus.* But, farmer, this libel is not like any other common crime, fixt in its nature, and uniform in its appearance; but it is of a most subtle temper,

temper, and puts on a thousand different shapes; sometimes, you see, it compasses the death of the King; at other times it may levy war or league with the King's enemies; in modern times it has lost much of its venom, and therefore only tends to excite insurrections, seditions, and rebellions, to alienate the hearts of His Majesty's subjects, to scandalize great officers of State, and now and then put a troop of soldiers to the blush, or fire the inflammable constitution of a Welchman.

*Far.* Does your worship see that gun which hangs over the chimneypiece?

*Jus.* Yes; and what then?

*Far.* It may be put to as many uses as a libel; for in the hands of a traitor it might be an instrument to attempt the Royal life; in those of a revengeful man, to perpetrate murder; owned by a ravisher or thief, it might commit a rape or robbery; and wielded by a poacher, it might destroy all the game in the country; while in your worship's possession, it is a lawful, inoffensive engine, used to defend your house, or fire at sparrows.

*Jus.* But the gun does not make the leading figure in any trial; it is only a part of the proof, or a circumstance of the indictment; the crime consists in something of a different nature, and therefore the gun can create no possible ambiguity, though applied to every possible case in which it can be introduced.

*Far.* But

*Far.* But if the jury were to be told, that they had nothing to do either with the intention of the shooter, or the effect of the fire ; but were only to find whether the prisoner had actually let off a gun, and whether the gun was of such and such a bore ?

*Jus.* They *might* do that, praying the judgement of the court as to all the rest.

*Far.* Perhaps they might ; but if that was all they could find, they might perhaps observe their oath, and acquit the prisoner. But all that I can extract from what your worship says, is, only that a printed paper may be evidence and instrument of several different crimes, like a gun ; for as to giving it the general name of a libel in all these different cases, it appears only an inaccuracy. Still, therefore, I conclude, that a printed paper being in itself no crime, and, therefore, not indictable, is only the evidence of some other crime, which must be stated in the indictment and tried by the jury ; and all these crimes, of which a printed paper can be evidence, are, in their own nature, as clear and intelligible, as rape, robbery, and murder.

*Jus.* But there is this difference, Farmer :—In most cases we are sure that a particular crime has been committed ; whereas, here we do not know that there has been any crime at all, unless by considering the libel itself.

*Far.* How does your worship mean ?

*Jus.* It

*Jus.* It may be certain, that a man's house has been burglariously entered, or that he has been put into bodily fear upon the highway, although it is doubted who has committed the fact. But, in the case of a libel, there probably has been no insurrection, no sedition, no disturbance; and did not the learned counsel inform the public, that such a wicked and abominable design had really existed, and were not the judge so good as to help the matter out, by imprisoning and fining the printer or author *according to his discretion*, perhaps not a soul in the nation would be a bit wiser than if the libel had been never published.

*Far.* And I suppose, for this reason, the jury also are directed not to consider the meaning or intention of the writing in question; by which means the contagion is so effectually stopped, that a man may be severely punished for a crime, which not an individual in the nation shall understand, except the Attorney General and the Judge.

*Jus.* It is necessary to crush the serpent in the egg.

*Far.* I have but one objection to all this.

*Jus.* What is that?

*Far.* I am told that juries are an essential part of the Constitution of this country, preserved inviolable to us from immemorial time, the best defence of every man's life and liberty, and, therefore, it appears to me to be the worst species of treason,



treason, to suffer their rights to be infringed, of powers transferred to others\*.

*Jus.* But

\* In magna charta we find, "*Nullus liber homo capiatur, vel imprisonetur, &c. nec super eum ibimus, nec super eum mittimus, nisi, per legale iudicium parium suorum, vel per legem terræ.*" Which Lord Coke expounds, "No man shall be condemned at the King's suit, either before the King in his Bench, where the pleas are *coram rege* (and so are the words "*nec super eum ibimus* to be understood) nor before any other commissioner or judge whatsoever (and so are the words "*nec super eum mittimus* to be understood) but by the judgement of his peers, that is, his equals, or according to the law of the land." *Inf.* p. 2. 46.

If this is law, it may appear rather doubtful, how even a libeller can be punished at the direction of the Court, who has not previously been found guilty of the libel, not of publishing, by the jury. For after all, the question will eternally recur, how a man is condemned by the judgement of his equals, when those equals have never even applied their minds to the consideration of his guilt.

Again, Lord Coke, in speaking of the old law of England, of which magna charta itself is only declaratory, observes, "Against this antient and fundamental law, and in the face thereof, I find an act of Parliament made, that as well justices of assize, as justices of peace (without any finding or presentment by the verdict of twelve men) upon a bare information for the King, before them made, should have full power and authority, by their discretion, to hear and determine all offences and contempts committed or done by any person, &c.—By colour of which act, shaking this fundamental law, it is not credible what horrible oppressions and exactions, to the undoing of infinite numbers of people, were committed by Sir Richard Empson, Knight, and Edmund Dudley, being justices of peace throughout England."

"But

*Jus.* But who requires you to do this?

*Far.* You, and every man that would have us, in any particular case, give up the power of judging, which we inherit from the Constitution, or devolve it upon any other person. And, as to the last reason which you have alledged, nothing can be more fallacious: for, if no positive ill con-

“ But at the Parliament holden in the first year of H. VIII.  
 “ this act of the eleventh of H. VII. is recited and made void,  
 “ and repealed——and the fearful ends of these two oppressors,  
 “ should deter others from committing the like, and should admonish Parliaments, that instead of their ordinary and pretious trial *per legem terræ*, they bring not in absolute and  
 “ partial trials by discretion.” Inf. p. 2, 51.

It is generally observed, that in the progress of a nation to servitude, the forms of the government are allowed to subsist, and the people are nominally free while they suffer all the miseries of slavery. Should the trial by jury be once lost, where would be the difference between England and the most despotic country, in respect to the liberty of the press? Whoever will look into the law of libels, as it has been collected, will find, that the most distant reflections upon the conduct of public men may be wrested into a crime. Where, then, is the liberty of an Englishman? Simply in this, that he may publish what he pleases without the leave of a licenser, and that if he is arraigned upon that account, he cannot suffer *nisi per legale judicium parium suorum*. But should it be once established, that juries have nothing to do with the guilt or innocence of the accused, but are only to find some unmeaning fact at the direction of the Court, their efficacy would be more completely lost, than were they at once abolished. They would then become merely the tools and engines of oppression, destined to share the hatred incurred by their employers, and to be the executioners of public virtue, as they had been the betrayers of public liberty.

sequence

sequence has yet happened, no evil, no loss either to society at large, or to any individuals, the crime is so much the lighter, so much the less deserving punishment, but not the more difficult to be ascertained: and nothing can be so palpably ridiculous as to assert, that juries may safely determine about murder, rebellion, treason, and every thing which shakes the very foundation of human society, but not about such trifles as may be passed over and despised without any material hazard.— But since your worship has been so good as to bear with me so long, I hope you will do me the favour to answer me a few plain questions.

*Jus.* What are they?

*Far.* Have juries, or have they not, a legal right to bring in either a general or special verdict upon every criminal issue that comes before them?

*Jus.* I will not absolutely deny their right; go on\*,

*Far.*

\* The justice could not deny that right without overturning the whole English law; for as the venerable Littleton saith, "Also in such case where the inquest may give their verdict at large, *if they will take upon them the knowledge of the law upon* the matter, they may give their verdict *generally* as is put in their charge;" and Lord Coke observes upon this passage, "Although the jury if they will take upon them (as Littleton here saith) the knowledge of the law, *may give a general* verdict, yet it is dangerous for them so to do, for if they do mistake the law, they run into the danger of an attainr, there-

*Far.* If they have this general right, must it not comprehend every particular case, and consequently libels?

*Jus. Hum.*

*Far.* Do they not swear "to what they can infer  
"and conclude from the testimony of witnesses by  
"act and force of their understandings, to be the  
"fact inquired after, which differs nothing in rea-  
"son from what a judge, out of various cases  
"considered by him, infers to be the law in the  
"question before him \*."

*Jus.* What then?

*Far.* When the fact inquired after is therefore, whether a particular person hath committed a particular crime charged against him, must they not use their understandings to infer his guilt or innocence from the evidence which comes before them; and if there is but one kind of evidence presented, and that evidence in its own nature more imperfect and inconclusive than ordinary, can that be a reason for giving a verdict without considering the evidence at all?

"fore to find the special matter is the safest way, *where the case is doubtful.*" Institutes, p. 1. sect. 368. It is at present allowed, I believe, that no attainr will lie against juries in criminal cases: "If he could not in civil causes before attainrs granted in them, he could not in criminal causes upon indictment, (*wherein I have admitted attainr lies not*)."  
Vaughan, 146.

\* Vaughan 142.

*Jus.*



*Jus.* But do you think the jurors are not bound to follow the direction of the judge?

*Far.* In respect to what?

*Jus.* In respect to the fact they shall find.

*Far.* It should seem "that the jury are the  
"only judges of the fact, and they are to make  
"the deductions and conclusions as to the truth  
"of the fact, from the evidence as it lies be-  
"fore them."

"But the court cannot make any deductions or  
"conclusions as to the truth of the fact, unless they  
"flow necessarily and demonstratively from the  
"evidence that the jury have stated, for they are  
"not judges of probable or improbable, but of  
"lawful and not lawful\*."

"Therefore always in direct and lawful  
"assistance of the jury, the judge's direction is  
"hypothetical, and upon supposition, and not  
"positive and upon coercion†."

Therefore, I conclude, that though the jury may voluntarily listen to the opinion and advice of the judge, as being those of a skilful and experienced friend, there is no obligation upon them either to find exactly the facts he may direct or no other; since they swear to give a verdict according to their evidence, but not according to the judge's opinion of that evidence.

\* Law of Evidence, 183.

† Vaughan, 149

“ A man cannot see by another’s eye, nor hear by  
 “ another’s ear, no more can a man conclude or  
 “ infer the thing to be resolved by another’s un-  
 “ derstanding or reasoning ; and although the ver-  
 “ dict be right the jury give, yet they being not  
 “ assured it is so from their own understanding,  
 “ are forsworn, at least in *foro conscientie* \*.”

*Jus.* You will at least allow the judge to direct  
 in point of law.

*Far.* “ Without a fact agreed, it is as impossible  
 “ for a judge, or any other, to know the law re-  
 “ lating to that fact, or direct concerning it, as to  
 “ know an accident that hath no subject.”

“ Hence it follows, that the judge can never  
 “ direct what the law is in any matter contro-  
 “ verted, without first knowing the fact ; and then  
 “ it follows, that without his previous knowledge  
 “ of the fact, *the jury cannot go against his direction*  
 “ *in law, for he would not direct†.*”

*Jus.* Do you then deny that fundamental prin-  
 ciple of our laws, that jurors are to find the fact,  
 but judges to decide what is law ?

*Far.* Certainly not.—When the jurors have  
 found their fact, the judge is to expose the law  
 that arises upon it.

*Jus.* What law is that ?

*Far.* How Can I tell, I am no judge or lawyer.  
 It is sufficient for me to know, that by the imme-

\* Vaughan, 148.

† Ibid. 147.

morial Constitution and fundamental laws of my country, I am to judge of the issue which comes before me, as often as I shall be upon any jury, to try that and to give a verdict according to the evidence.

*Jus.* But would you dare to give a verdict point blank, against the direction of the Court ?

*Far.* How can the Court pretend to rule my verdict, when it is universally confessed, that the business of the Court is only to declare the law which arises from the fact I find ? Is the Court to find the fact too, as well as to lay down the law ?

*Jus.* But may not the court tell you, that your verdict involves too much of the law, and therefore direct you to change it ?

*Far.* If I am convinced by their reasoning I shall change my opinion : otherwise, if my conscience tells me I ought, *I will take upon me the knowledge of the law and give a general verdict\**. Have I not a right to do so ?

*Jus.* What, can you possibly pretend to understand the law ?

*Far.* Many parts of it you have told me *I am bound to know*, as well as every man throughout the kingdom. As to the abstruser parts, I leave them to the judge ; these, however, cannot often occur in common criminal causes.

*Jus.* But may you not deceive yourself ?

\* Littleton.

*Far.* And may not a judge deceive himself or me, two dangers instead of one? But plain sense and plain honesty will go farther than is commonly imagined. And after all, I have done my duty if I give a verdict according to my understanding and my conscience, and am excuseable for involuntary error.

*Jus.* But is it not safer to take the opinion of the judge?

*Far.* What, in contradiction to my own understanding and conscience? Am I to declare that true, which I believe to be false, and that false, which I believe to be true, and this upon oath? Am I sworn to make true deliverance between the prisoner at the bar and the King, in order to deliver him over to another, who may make a deliverance, which I believe to be false? Is this, your notion of duty, religion, and obligation?

*Jus.* Farmer, thou art a tough obstinate fellow. — But why not bring in a special verdict?

*Far.* What does the law say upon that head?

*Jus.* “An open verdict may be either general, guilty, or not guilty, or special setting forth all the circumstances of the case, and praying the judgement of the Court, whether, for instance, on the facts stated, it be murder, manslaughter, or no crime at all. This is where they *doubt* the matter of law, and therefore *chuse* to leave it to the determination of the Court; though they have an *unquestionable right* of determining upon all the  
“circum-



“ circumstances, and finding a *general verdict*, if  
“ they think proper so to hazard a breach of their  
oaths \*.”

*Far.* A most salutary provision ! I promise your  
worship, whenever I really doubt, and think I  
hazard a breach of my oath, by bringing in a ge-  
neral verdict, I will always find a special one.

*Jus.* But this is not quite the thing ; you should  
bring in a special verdict, at the desire of the  
Court.

*Far.* That is to let them discharge the office of  
jurymen, and make deliverance in my stead. For  
my finding a bare indifferent fact, and leaving  
others to make out the crime or innocence of the  
prisoner, at their discretion, is a complete resignation  
of my office. In that case, juries may as well be  
abolished at once. Your law says, I am to find a  
special verdict when I doubt ; is the judge, then,  
to decide for me, whether I doubt or not ?

*Jus.* In knotty points.

*Far.* Is he to decide for me then, what is a  
knotty point ? Suppose the question is, whether  
two and two make four, and the judge tells me  
I am to doubt it ? Do you think the doubt will  
arise at the word of command ?

*Jus.* But he will only desire you to doubt in dif-  
ficult points.

*Far.* In one word, Mr. Justice, no human being  
can decide for another, when he shall believe, and

\* Blackstone's Commentaries, 4. 361.

when he shall doubt. I will listen to the judge with the greatest respect, but if, after all, *I do not doubt*, I will find *a general verdict, according to my oath*.

*Jus.* But in the case of libels, which we were talking of just now, there may be a concealed venom, which does not appear at first sight. These libellers are the most subtle fellows in the world; they are more than a match for the honesty and simplicity of you and all your fellows. Therefore, the best way is to find what you are sure of, the printing and publishing, and leave the rest to the Court.

*Far.* So I will, if I have any doubt whether the publication is a libel or not.

*Jus.* But, my honest friend, you need not take the trouble of considering that matter at all.

*Far.* Then, there can be no ground for a special verdict. — Did you not tell me, that the special verdict was only to be found when I doubted the law? Now, the affair of publication is not a matter of law, and that, you tell me, I am to find. And, if I consider nothing farther than that, what is it I doubt? — In order, therefore, to have any reason for a special verdict, I must consider the tendency of the publication; and if, then, *I doubt about the law*, I will bring in a special verdict, and beg the assistance of the Court.

*Jus.* But if there should be this concealed venom?

*Far.*

*Far.* If the venom is so well concealed, that twelve men of common understanding cannot find it out, it will never do much harm. It will never excite many insurrections or rebellions.

*Jus.* But you seem to entertain a very groundless apprehension of the severity of the Court : Farmer, I must tell you, their mercy is so great, that it is observed, by an eminent lawyer, “ I have rarely known, upon any special verdict, where the question was murder or manslaughter, judgement to be given for murder, but commonly for manslaughter, or *se defendendo*. *Tutius erratur ex parte mitiori* \*.”

*Jus.* Then I may be accessory to the escape of a villain that deserves to suffer.

*Jus.* You surely would not have a man condemned, that does not come fairly within the reach of the law. It is much safer to err on the side of humanity.

*Far.* But I should have another scruple, your worship ; if the Court are so very merciful, they may let these confounded libellers escape ; by which means, I may have an insurrection or rebellion to answer for.

*Jus.* No, no, Farmer, you need not fear that.

*Far.* Indeed but I do, and unless your worship can give me some instances to the contrary, *I shall always be afraid of leaving a libeller to the mercy of the Court.*

\* Hale's Pleas of the Crown, 2. 305.

*Jus.* Then I will tell you some capital cases, if that be all. In the year 1633, one Prynne was brought before the Star-chamber, only for writing a book against stage-plays, in which there were some equivocal passages, which, it was thought, glanced at some people in power; and only hear, how forcibly the good Lord Cottington concludes his sentence: "And I do condemn Mr. Prynne, to stand in the pillory in two places, in Westminster and Cheapside; and that he shall lose both his ears, one in each place; and with a paper on his head, declaring *how foul an offence* it is, viz. That it is for an infamous libel against both Their Majesties, State, and Government; and lastly (nay not lastly) I do condemn him in 5000*l.* fine; and lastly, to perpetual imprisonment\*."

*Far.* That was home indeed.

*Jus.* About the same time, John Lilburn, was summoned before the same Court, for a libel, of which, indeed, he was not guilty; but being an obstinate, hardened dog, he refused to take an oath to answer all the questions, which the Court might ask, and so he was fined 500*l.* besides being whipped and pilloried†.

\* State Trials, 1. 402. 2d edition.

† Ibid, 7. 260.



*Far.* There was no great mercy in that to be sure: but I thought the precedents of the Star Chamber had not been much in use at present.

*Jus.* That is an over-strained nicety, for we have scarcely any other in matter of libel. Besides, where is the great difference between the Star Chamber and any other Court, according to that excellent doctrine of confining the attention of the jury to some immaterial point that decides nothing?

*Far.* That is indeed true.

*Jus.* Well, here is another precedent, not taken from the Star Chamber:—one Benjamin Keach was tried for a libel in printing something contrary to the established doctrines of the church, and the worthy judge was so determined against libellers, that he would not allow the prisoner to say a word in his own defence.

*Far.* I thought that had been permitted in the worst of cases.

*Jus.* It commonly is; but there is something in the very nature of a libel that takes possession of a judge's soul, and hurries him beyond his usual moderation. In this trial the jury wished to speak with the judge, upon which one of them was ordered to come *and speak privately*. "Then the officer called one, and he was set upon the clerk's table, and the judge and he whispered together a great while; and it was observed,

“ that the judge having his hand upon his shoulder, *would frequently shake him* as he spake to him.” \*

*Far.* I; that shaking of a juryman law too, your worship?

*Jus.* Only in matter of libel. In short, farmer, the wholesome severity of the court has been such, and their vigilance so compleat, in preventing insurrections and rebellions, that I do not believe there is a single instance upon record of a libeller’s once coming within their clutches, and escaping without a swinging fine, imprisonment, whipping, pillory, and every mark of virtuous abhorrence which they could inflict.

*Far.* But this affair seemed rather to be a controversy about religion, than any thing which tended to defame the government, or excite insurrections.

*Jus.* As to that, farmer, the term of libel is sufficiently extensive to take in every species of offence which relates to words; and the law will not suffer

\* *Keach*—As to the doctrines . . . .

*Judge.* You shall not speak here, except to the matter of fact: that is to say, whether you writ this book or not.

*Keach.* I desire liberty to speak to the particulars in my indictment, and those things that have —

*Judg.* You shall not be suffered to give the reasons of your damnable doctrine here, to seduce the King’s subjects.

*Keach.* Is my religion so bad that I may not be allowed to speak?

*Judge.* I know your religion . . . but I shall take such order, as you shall do no more mischief. State trial, 2. 548.

itself

itself to be eluded. Besides, he that pretends to exercise his reason about matters of religion, will, in a short time, do it in matters of government.

*Far.* And is this offence reserved for the court too?—Are they infallible in matters of religion as well as in politics? Do they make creeds as well as prevent insurrections?

*Jus.* To be sure there are several cases of a grand jury's presenting certain books as blasphemous: but this is an unnecessary trouble: it is much better to leave it to the vigilance of the Attorney General.

*Far.* Now you mention grand juries, do they not take an oath too?

*Jus.* Yes, they take an oath to present the truth, the whole truth, and nothing but the truth.

*Far.* And are they too only to find the fact? That is, whenever a hot-headed fellow, from malice or interest, shall bring a charge of libel; are they to find the bill without reading a word in the book?

*Jus.* I will not entirely decide that question: however, it would be more modest to leave the affair to the court.

*Far.* I see oaths are of very little consequence, when weighed against the directions of the court. But, how, if some notorious scoundrel were to present the Bible itself as a libel, are they to find the bill upon the credit of printing and publishing?

*Jus.* That case might indeed be a little embarrassing. But as to the grand jury, we have found a method

method of taking all trouble off their hands, by the compendious invention of informations filed *ex officio* by the Attorney General. And could we but extend the practice a little farther . . .

*Far.* I understand your worship, and will give you no farther trouble. You have enabled me to form an accurate opinion of the treatment which all men accused of libels may expect from courts of justice; and since nothing can well be published which may not be converted into a libel by ingenious malice, I shall be more attentive than ever to preserve the constitutional rights of juries, as the only bulwark of rational liberty. And whenever a case of libel shall come before me as a juror, I will investigate the nature and tendency of the publication, that I may fulfil my oath and do justice to the accused. I am indeed a poor man, but I hold my integrity and the privileges of my countrymen dearer than my life. Therefore, from this time, neither promises nor threats shall prevent me from considering the whole offence which is charged in every indictment, and finding *a general verdict, if I am able*; nor will I ever bring in a special one, till I find something which baffles the whole force of my understanding, and *involves me in irresistible doubt*; and this, I am convinced, will happen no oftener in the consideration



sideration of libels, than in that of any other crime which comes before me \*.

\* I was going to add an apology to the gentlemen of the law for invading their province; but I considered that a subject which involves the general rights of a whole people, ought to engage the attention of every individual. I owe, therefore, no apology, unless for my own incapacity to do justice to so important a subject; but if these reflections are in general just, they may, perhaps, merit the attention of those who have not had leisure or opportunity to consider this great question with all the accuracy it deserves; and should I have fallen into any material errors, they probably will not remain long unconfuted, and thus even by my mistakes, the public will arrive at truth. The size to which these observations upon libels have insensibly swelled, renders it necessary to omit every thing which is not essential to the argument; I should, however, not do justice to the subject, did I omit the following cases, in which the right of juries seems to be as firmly established by *precedent* as I think it is by law and reason.

In the famous trial of the bishops, 1688, Mr. Justice Holloway thus instructs the jury; "The question is whether the petition of my lords the bishops, be a libel or no; gentlemen, the end and intention of every action is to be considered . . . . .  
"If you are satisfied there was an *ill intention of sedition*, or the like, you ought to find them guilty; but if there be nothing in the case that you find, but only that they did deliver a petition to save themselves harmless, and to free themselves, from blame, &c. I cannot think it is a libel; *it is left to you, Gentlemen*; but that is my opinion."

Mr. Justice Powell — "Gentlemen, *to make it a libel, it must be false*; it must be malicious, and it must tend to sedition. . . . . If this be once allowed of, there will be no need of Parliament, all the legislature will be in the King, which is a thing worth considering of, and I leave the issue to God and *your consciences*". State Trials, 4. 390. Every body, I believe,

lieve, is acquainted with the result of this trial; the bishops were acquitted by a general verdict of not guilty.

In the trial of John Tutchin, for a libel, 1704, Lord Chief Justice Holt, after reading the passages stated as libellous, observes to the jury, "This is to possess the people, that they may at their will and pleasure, when they take a fancy thereto, dis-  
" seise the Queen, and set up what governor they please. These  
" two and the rest which I shall mention by and by are given in  
" evidence."

Again, "Now you are to consider, whether the words I have  
" read to you, do not tend to beget an ill opinion of the admini-  
" stration of government." State Trials, 5. 536. Here we see a  
learned and upright judge informing the jury, that the crime sub-  
mitted to their consideration, is, whether the publication in ques-  
tion had a tendency to beget an ill opinion of the administration of  
government, and that the particular passages stated in the in-  
dictment were only given in evidence.

In the trial of John-Peter Zenger, at New York, for a libel, 1735, the Chief Justice thus concludes his charge:—"I shall  
" only observe to you, that as the facts or words in the informa-  
" tion are confessed, the only thing that can come in question be-  
" fore you, is, whether the words, as set forth in the information,  
" make a libel; and that is a matter of law, no doubt, and which  
" you may leave to the Court." State Trials, 9, 297.—Here  
the wish of the Court is very modestly introduced, and the Jury  
are only told, they may leave it to the Court: they, however,  
brought in a general verdict of not guilty.

In the trial of William Owen, upon an information for libel, 1752, the Jury brought in a general verdict, not guilty, and went away; but at the desire of the Attorney General, they were called into Court again, and asked this leading question, viz.  
"Gentlemen of the Jury, do you think the evidence laid before  
" you, of Owen's publishing the book by selling it, is not suffi-  
" cient to convince you that the said Owen did sell this book?"  
At which the foreman appeared a good deal fluttered; and the  
Judge repeated the question; upoa which, the foreman, without  
answering

answering the question, said, "Not guilty! Not guilty!" and several of the jurymen said, "This is our verdict, my Lord, and we abide by it." Upon which the Court broke up. State Trials, 10, 203. Appendix.

I shall trouble the reader with only one instance more: In the trial of John Horne, Esq; upon an information for a libel, 1777, Lord Mansfield thus begins his charge to the jury; "Gentlemen of the jury, if ever there was a question, the true merits of which lay in a very narrow compass, it is the present; this is an information against the defendant, for writing and composing, and printing and publishing, or causing to be printed and published, that is, for being the author and publisher of a paper, which the information charges as a seditious libel; if it be a seditious libel in its own nature, there is no justification attempted; why then there are but *two points* for you to satisfy yourselves in, in order to the forming of your verdict.

"Did he compose and publish; that is, was he the author and publisher of it? Upon this occasion that is entirely out of the case; for it is admitted . . . . Why then there remains nothing more but that which reading the paper must enable you to form a judgment upon, superior to all the arguments in the world; and that is,

"Is the sense of this paper that arraignment of the government, and the employment of the troops, upon the occasion of Lexington mentioned in that paper? Read! You will form the conclusion yourselves."

There seems to be little occasion to make any comments upon this passage; for had this great man been of opinion that the jury had nothing to do with the spirit and tendency of a pretended libel, he would have told the jury that nothing remained but to bring in the verdict, because the publication was acknowledged. Instead of which, this great defender of the rights of juries bids them read the paper, in order to form a judgement of its tendency.

"Is the sense of this paper that arraignment of the government, &c. mentioned in that paper?" That is, does the sense of this paper convey that arraignment of the government mentioned in the indictment?—The arraignment of the government is the



crime, and the publication is submitted to their consideration as an evidence.

Again, " You will judge whether it conveys a harmless innocent proposition for the good and welfare of this kingdom, the support of the legislative government, and the King's authority according to law; or whether it is not denying the government and legislative authority of England, and justifying the Americans; averring that they are totally innocent; that they only desire not to be slaves; and that the use that is made of the King's troops upon this occasion (for you will carry your mind back to the time when this paper was wrote) was to reduce them to slavery; and if it was intended to convey that meaning, there can be little doubt whether that is an arraignment of the government and of the troops employed by them or not; *but that is a matter for your judgment.*"

His Lordship goes on to observe, that in a former trial of printers, there had been a difference of opinion among the jury: one of them doubted whether actual proof of a seditious intention might not be necessary in respect to a printer, distinct from the inference to be drawn from the publication. The other thought, that a seditious intent was by law to be inferred from the seditious act. " I told them (continues his Lordship) that it is not necessary to prove an actual intent, which is the private operation of a man's mind; *but a jury were to exercise their judgement from the nature of the act, as to the intent with which it is done.*" A more explicit confirmation of the right of juries can hardly be imagined than this last passage, which ought to be handed down to latest posterity as an equal proof of the virtue and ability of the illustrious author.

Since this pamphlet has been in the press, an excellent essay has been published upon the rights and duty of jurors by the Rev. Joseph Towers; and a very sensible dialogue between a judge and the foreman of a jury.

6 DE 68  
THE END.



## E R R A T A:

It is necessary to mention one mistake, which has not been corrected, in the 14th page. It is not to London, but to the clerk of the peace for their county, that qualified sportsmen must go to enter their names; nor is the penalty fifty guineas, but fifty pounds. P. 71, instead of "nor no Solon," read, "nor one Solon."

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